TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 173.

JOHN A. DUTCHER, EDWARD H. BALL, AND JOHN R. GOODRICH, APPELLANTS,

vs.

ADONIRAM J. WRIGHT, ASSIGNEE OF NEILS PETERSON, A BANKRUPT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED OCTOBER 17, 1874.

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1 Circuit court of the United States of America for the eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the eastern district of Wisconsin, began and held, according to law, at the city of Oshkosh, in said district, on the second Tuesday (being the fourteenth day) of July, A. D. 1874—

Present, the honorable James C. Hopkins, judge, presiding; Charles S. Hamilton, marshal; Edward Kurtz, clerk.

Among other the following proceedings were had, to wit:

ADONIRAM J. WRIGHT, ASSIGNEE OF THE estate of Neils Peterson, bankrupt, complainant,
vs.
JOHN A. DUTCHER, EDWARD H. BALL, & John R. Goodrich, defendants.
} In equity.

Be it remembered that heretofore, to wit, on the ninth day of January, A. D. 1872, came the above-named complainant, by his solicitor, Mr. E. Mariner, and filed his bill of complaint against these defendants, as follows:

Bill of complaint.

In chancery.

To the judges of the circuit court of the United States for the eastern district of Wisconsin.

Your orator, Adoniram J. Wright, assignee of the estate of Neils Peterson, bankrupt, who is a citizen of the State of Minnesota, brings this his bill of complaint against John A. Dutcher, Edward H. Ball, and John R. Goodrich, who are citizens of the State of Wisconsin, and
2 thereupon says that, on or about the eighth day of April, A. D. 1870, in the district court of the United States for the district of Minnesota, upon his (said Peterson's) petition therein filed under and in pursuance of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," certain proceeding' were then and there had, of which the said court had jurisdiction, and by which the said Neils Peterson was duly declared bankrupt under the aforesaid act of Congress; and afterwards, to wit, on or about the twenty-eighth day of April, A. D. 1870, in accordance with the rules and practice of said court, your orator, being a resident and citizen of said State of Minnesota, was duly appointed assignee of the estate and effects of the said Neils Peterson, who then was, and still is, a citizen of said State of Minnesota, residing therein; and afterwards, to wit, about the day and year last aforesaid, an assignment thereof was duly made to your orator, and under and by virtue of said proceedings and the act of Congress aforesaid, all the estate, property, and effects theretofore belonging to said bankrupt became & were absolutely vested in
3 him, your orator, as such assignee.

And your orator further shows that on the eighth day of Fe-

cember, A. D. 1869, the said Neils Peterson was, and for a long time prior had been, engaged in trade, doing business as a merchant in the city of Rochester and State of Minnesota, in said district of Minnesota; and that on that day, and for a long time previous, the said defendants, John A. Dutcher, Edward H. Ball, & John R. Goodrich, had been engaged in trade, doing business as merchants, under the firm-name & style of Dutcher, Ball & Goodrich, at the city of Milwaukee, in said State & district of Wisconsin.

And your orator further shows that he is informed and believes, and so charges the fact to be, that, on the said 8th day of December, 1869, the said Neils Peterson was, and had been for a long time prior to that date, bankrupt and insolvent, and on said eighth day of December, A. D. 1869, the said Neils Peterson was indebted to the said defendants, as said firm of Dutcher, Ball and Goodrich, in a large sum of money, to wit, the sum of one thousand seven hundred & forty-one dollars and twelve cents, which indebtedness had accrued long prior to said
4 date, and was then due and owing from said Peterson to said defendants for goods, wares, and merchandise theretofore sold by them, as said firm, to him, the said Peterson, and delivered at Rochester aforesaid.

And your orator further shows that he is informed and believes, and so charges the fact to be, that the said Neils Peterson, on the said eighth day of December, A. D. 1869, being then bankrupt and insolvent and indebted, as aforesaid, and without any other consideration than the said indebtedness, and with a view to give a preference to the said defendants, and to enable them to secure a preference on account of said indebtedness, (over and above other creditors of the said bankrupt,) the said defendants being creditors of said Neils Peterson, as aforesaid, & holding a claim against him as aforesaid, did, with the knowledge and assent & procurement of said defendants, assign, transfer, and convey at the city of Rochester, in the State & district of Minnesota, in fraud of his creditors, a certain portion of his property, being in Minnesota aforesaid, consisting of a large number of notes, securities, and
5 mortgages, and other evidences of indebtedness & property to said Peterson, including a large number of accounts and other choses in actions, to the aggregate value of three thousand dollars.

And your orator further shows that he is informed and believes, and so charges the fact to be, that all and singular the acts aforesaid were made and done in fraud of the provisions of the said bankrupt act. and that the said defendants had then & there reasonable cause to believe that such assignment, transfer, and conveyance, and all & singular the aforesaid acts, were made and done with a view to prevent the said property from coming to the assignee in bankruptcy of the said bankrupt, and to prevent the same from being distributed under the said bankrupt act; and said defendants then and there had reasonable cause to believe that such assignment, transfer, and conveyance, and all and singular the aforesaid acts were made and done with a view to prevent the said property from coming to the assignee in bankruptcy of the said bankrupt and to prevent the same from being distributed under the said bankrupt act, and said assignment, transfer, and conveyance
6 were made and done to defeat the effect of the said act in securing equal distribution of assets among creditors, and to prevent fraudulent preferences; and the said defendants had then reasonable cause to believe that such assignment, transfer, and conveyance, and all and singular the aforesaid acts, were made and done to defeat the effect of said act in securing equal distribution of assets among

creditors and to prevent fraudulent transfers, and that said assignment, transfer, and conveyance were made and done to defeat, impair, hinder, impede, & delay the operations and effects of the said act; and the said defendants had reasonable cause to believe that said assignment, transfer, and conveyance were made & done to impair, hinder, impede, defeat, and delay the operations and effect of the said acts.

And the said assignment, transfer, and conveyance were made and done particularly to evade the provisions of said act making void any conveyance of property with intent to give a preference to creditors, and were made and done, and were intended to be, in fraud of said act; that the said defendants had then and there reasonable cause to believe that the said Neils Peterson was then in failing circumstances or insolvent; that

7 the said assignment, transfer, & conveyance were not made in the ordinary & usual course of business of the said bankrupt.

And your orator further shows that he is informed & believes, and so charges the fact to be, that, in pursuance and furtherance of said fraudulent intent and acts aforesaid, on or about the said eighth day of December, 1869, at Rochester aforesaid, the said defendants took into their possession, control, & custody all the said property aforesaid & remove' the same to Milwaukee, in the State and district of Wisconsin, and have ever since so retained & claimed the same or the avails thereof.

And your orator further shows unto this honorable court & alleges the fact to be that, from his own knowledge, or from information, or from the books and papers of said Peterson, or any source, he is unable to accurately ascertain or discover a full or particular description or statement of the said property so as aforesaid assigned, transferred, & conveyed to said defendants, or now in their possession or control, or which so as aforesaid has come to their hands and control, or the amount

8 of money collected thereupon by said defendants, or if any securities or new obligations they may have taken thereon, or in lieu thereof, nor has he, the said assignee, your orator, any means of so ascertaining the same, nor has he such, nor can he obtain such description or possession of the large amount of property aforesaid which so came to the hands of said defendants as aforesaid, or of the avails thereof, nor any knowledge or description thereof, so as to enable him, as he is advised by his counsel, and verily believes, to bring and maintain an action at law thereupon without a discovery from said defendants, who are well advised of and concerning all matters in relation thereto.

And your orator further shows, and charges the fact to be, that the said defendants conceal from your orator all of said property, or any account thereof. That your orator on the 5th day of August, 1871, in Milwaukee aforesaid, as said assignee, demanded in writing of said defendants that they deliver up to him, as assignee aforesaid, all the property assigned, transferred, or conveyed to them by said Peterson, which had been transferred to them at any time within six months preceeding

9 the eighth day of April, 1870, and all moneys and property that had been collected or received by them on any or all of said property. And that your orator again, on the 21st day of December, 1871, as such assignee, made demand of them in writing at Milwaukee aforesaid, to furnish for him to his attorney, E. Mariner, at his office, in said city, a correct list and account of the notes & obligations, and securities, accounts, demands, and property, so as aforesaid assigned, transferred and conveyed to them on or about the eighth of December, 1869, or at any other time within six months prior to the eighth day of April, 1870, by said Peterson as security for or in payment of his indebtedness to them, and to deliver up to said attorney all moneys by them received

from any of the same, with a statement of the time the same was so paid to them and by whom; that said defendants totally neglected and refused to comply with either of said requests & demands, and neglected and refused, and still neglect and refuse, to furnish said statement, deliver up said property or moneys, or any part or portion thereof, and do still retain the same under their custody or control, as your orator is
10 informed and believes, and charges the fact to be, within said city of Milwaukee, in said State and district.

And your orator further shows that since his appointment as assignee aforesaid, he has, as said assignee, requested the said defendants to account to him for all of said property, to pay him any moneys collected, and to deliver to him all uncollected securities and property so received, with a full account thereof; that they had hitherto wholly neglected & refused so to do, and still refuse.

And your orator further shows that he is informed and believes that said defendants give out & pretend that they are the bona-fide holders of all said property, or the avails thereof, and that they received the said property from said Peterson in satisfaction of or security for a certain joint indebtedness to them from said Peterson, to wit, the indebtedness aforesaid, and that your orator as such assignee, or otherwise, has no right, interest, or claim therein or thereto. Whereas, on the contrary, your orator charges & insists that said defendants received, and said Neils Peterson assigned, transferred, & conveyed the same to said defendants in the manner & for the fraudulent purpose & purposes aforesaid, and in fraud of said bankrupt act, and that said
11 defendants are not, and never were, bona-fide holders of any of said property, or of the avails thereof, and that said defendants have no right or interest, and never had any right or interest therein, but that the same are lawful assets, for the benefit of said bankrupt's creditors at large & belong to your orator, as said assignee, and should be surrendered to him for that purpose, and are unlawfully detained & concealed by said defendants as aforesaid; all which actings and doings and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator, and he has no remedy, or complete remedy, without the assistance of a court of equity.

To the end, therefore, that the said defendants and each of them may, if they can, show why your orator should not have the relief hereby prayed, and may before their & each of their corporal oaths and according to the best and utmost of their and each of their knowledge, remembrance, information, & belief, full, true, direct, and perfect answer make to each of the several interrogatories hereinafter numbered and set forth as by the note hereinunder written he is required to answer, that is to say—

12 First. Whether Neils Peterson, hereinbefore mentioned, was indebted to the said defendants, as the said firm of Dutcher, Ball & Goodrich, on or about the 8th day of December, 1869. If so, on what account, and in what did it originate, to what amount, and when did said indebtedness accrue, and when was, and how long had the same been due and payable.

Second. If to the last interrogatory they shall answer that such indebtedness did exist, to then state what, if any, security they then had for such indebtedness, what evidence they had of such indebtedness, and how long they had held the same, and attach copies (if able) of said security or securities, evidence or evidences, to their answer, or include the same therein.

Third. How often, and when, prior to the 8th day of December, 1869,

did they request said Peterson to pay, arrange, or satisfy said indebtedness, or any part thereof, on one or more occasions, and if they did at any time so call upon or request payment, arrangement, or satisfaction, was it by verbal or written communication? If by written communication, let them attach copies of their letters or said writings (if able) hereto; if unable, state why unable, and give the substance of said writings or letter.

13 Fourth. Did they prior to the 8th day of December, 1869, receive any letters or writing from said Peterson relative to their account with him and his indebtedness to them? If so, when did they receive the same, and how many such letters did they receive? Let them attach a copy of said letters to their answer, if able; if unable, state why they are not able so to do, and state the substance of said letters.

Fifth. Did they on or about the 8th day of December, 1869, know, or were they informed, of any other indebtedness of said Neils Peterson due or unpaid at that time? If so, to what amount, and how did they become acquainted with the fact of his being so indebted, or who gave them any such information, and did they inquire if he was indebted, and to what amount?

Sixth. Did they, or any of them, or any of their attys. or agts., have any or several interviews with said Neils Peterson on or about the 8th day of December, 1869, relative to the said indebtedness, or his indebtedness to others? If so, when, and in what particular place, did said interview occur? What was the nature thereof? Who was present? State fully all that was done and said at said several interviews. What,

14 if any, proposition was made as to defts.' claim against said Peterson, and the securing or payment thereof? If any, by whom was said proposition made, & to whom?

Seventh. Did said Neils Peterson, on or about the said 8th day of December, 1869, assign, transfer, and convey to them, or to any person for them, any securities, mortgages, obligations, notes, evidences of indebtedness, accounts, choses in action, or of the property belonging to him? If yea, state where said assignment and transfer was made. Whether such assignment and transfer was made absolutely in payment of his said indebtedness to them, or as collateral security therefor, and the terms thereof, and each and every particular concerning the same, and if said assignment and transfer was in writing, let them attach a copy thereof to their answer.

Eighth. If said transfer was made in trust for them to a third person, state where the same was so made, and the name and residence of said trustee.

Ninth. Whether, in pursuance of said transfer and assignment and conveyance, they received the property so assigned and transferred, or was it received by any one for them, or in trust, and when and where

15 was it so received, and from whom and what proportion did it take and exhaust of the available credits and choses in action of said Peterson, and whether the said property was selected from the general mass of said Peterson's securities, accounts, and credits by the said defts., or were they so selected for them, and by whom were they selected?

Tenth. Where are said securities, mortgages, obligations, notes, evidences of debt, demands, accounts, choses in action, and property now, and under whose control, and where have they been ever since said assignment, transfer, and conveyance? If they are in defts.' custody, or under their control, or that of any of defts.' agents or attys., state

where they are, and the name of said attys. or agents, and his or their residences, and how long they have been so under the said custody and control, either of said defts. or said attys. or agents.

Eleventh. If they shall say they have any or all of said property in their hands or under their control, in the city of Milwaukee, state when they so received them, from whom, with a full description of said securities, mortgages, obligations, notes, evidences of debt, demands, accounts, credits, & choses in action & property; give a schedule thereof.

16 Twelfth. Give and attach to this answer of defts. a full and particular description and schedule of every security, mortgage, obligation, note, evidence of debt, claim, demands, accounts, credits, choses in action, and of any and all property by said Neils Peterson assigned, transferred, or conveyed to said defts. or for them, either in payment of said indebtedness or as security therefor, or about the 8th day of December, 1869, or at any time within 6 months prior to the 8th day of April, 1870, giving dates, amounts, and full and perfect description thereof, with the residences of the various persons liable thereon or signing the same.

Thirteenth. State how much money defts. have received on or from said securities, mortgages, obligations, notes, demands, accounts, credits, and choses in action, or other property from the avails thereof; when and from whom and by what means they received it, and from whom it was collected, and by whom it was paid; and if said defts. have or hold, or have held, any new notes or securities, or evidence of the indebtedness taken from any person for or by you in settlement or security for any debts due or to become due on or for any of said property so assigned, transferred, or conveyed; declaring when and from whom the same were taken, and giving a description of the same;

17 stating where they now are or what has become of the same, how much money has been collected thereon, and when and from whom collected.

Fourteenth. Whether at the time of said assignment, transfer, and conveyance there was any, and what, agreement or understanding as to any surplus that might remain over and above defts.' claim, when it should be satisfied out of said property so assigned, or that said Peterson should have any further credit for goods thereafter to be sold by defts. to him, and how or out of what fund payment was to be made for said goods.

Fifteenth. Whether at or about the time of said assignment, transfer, and conveyance anything was said in regard to said Peterson continuing in business, or as to his taking the benefit of the bankrupt act, or relative to his pecuniary affairs; if so, what was said, and by whom.

Sixteenth. Why did deft.' not insist upon and receive cash in payment of their said claim, and why did they take said assignment, transfer, and conveyance, and what inducements, if any, did they hold out to him for making such transfer? Did they agree to take said property so assigned at 50 cents, or at any other rate, on the dollar, and ap-

18 ply it in payment of said indebtedness?

Seventeenth. How long had defts. been in trade with said Peterson and to what amount had he traded with them prior to the 8th day of December, 1870, and had they ever prior thereto taken any such transfer, conveyance, or assignment in payment of, or as security for, his indebtedness accrued or to accrue? If so, when & where & and under what circumstances?

Eighteenth. Has said Peterson ever traded with defts. since said transaction of, on, or about the 8th December, 1869? If so, to what amount; when and on what terms; &, if on credit, has he made any payment or payments thereon, or have defts. given him any credit therefor on account of said previous assignment, transfer, & conveyance to them? If any such credit, was it in pursuance of any understanding or agreement had by or for you with him on or about the said 8th December, 1869?

Nineteenth. Whether defts. claim, give out, and pretend to be the bona-fide holders of all or any of said property so assigned, transferred, & conveyed, and of the avails thereof, and that they received said property in satisfaction of, or security for, joint indebtedness to them from
19 said Peterson, & that said complainant, as such assignee or otherwise, has no right, interest, or claim therein or thereto.

Twentieth. Whether the said assignee on the 5th day of August, 1870, at the city of Milwaukee aforesaid, did not, in writing, demand of them to deliver up to him, as assignee of said Neils Peterson, all the property hereinbefore alleged to be so as aforesaid transferred, assigned, or conveyed which had been transferred to said defendants at any time within six months preceeding the 8th day of April, 1870, and all moneys and property that had been collected or received by them, or any or all of said property; and whether, on the 21st day of December, 1871, at Milwaukee aforesaid, the said assignee did not, in writing, demand of defts. to furnish for him to his attorney, E. Mariner, at his office, 110 & 112 Wisconsin street, in said city of Milwaukee, a correct list and account of the notes, obligations, securities, accounts, demands, and property assigned, transferred, conveyed, or delivered to them on or about the 8th day of December, 1869, or at any time within six months prior to the 8th day of April, 1870, by said Peterson, as security or in payment of his indebtedness to them, and also to deliver at the same time and place
20 to said attorney all moneys by them received from any of said notes, obligations, securities, accounts, demands, and property, with a statement of the time that the same was so paid to defts., & by whom.

Twenty-first. Whether defts. have in any way complied with either of the requests and demands in the last interrogatory mentioned, & whether you have not neglected and refused, and still do neglect and refuse, to accede in any way to either of said requests and demands.

And your orator prays that the said defendants, John A. Dutcher, Edward H. Ball, and John R. Goodrich, may be required to render a just, true, and full discovery and account to your orator of and concerning all and every the said mortgages, notes, obligations, evidences of debt, choses in action, demands, accounts, and property so as aforesaid conveyed, transferred, and assigned to them, or in trust for them, by said bankrupt, on or about the 8th day of December, 1869, or at any time within six months prior to the 8th day of April, 1870, and of all moneys collected or received thereon or therefrom, by them and for them, and when and where so received, and from and by whom,
21 and of any notes or securities or property received by them in place of, or in payment of, or as security for any demand or property so assigned, conveyed, or transferred to them, and of all and every matter and thing connected therewith or any part thereof, as hereinbefore charged; and that all said property, and the avails thereof, may be decreed to be assetts justly and legally belonging to said bankrupt's estate, for the benefit of his creditors; and that said property, and all avails thereof, be decreed to be made assetts in the hands of said as-

signee for the benefit of the creditors of said bankrupt; and that said defendants be decreed to deliver said assignee all said property, except such as they have converted into money, and to pay over all said moneys, with interest from the time they received the same, to said assignee, and to fully account for all demands and claims, with interest, which they may have settled at less than their full amount; and that they pay to your orator, as assignee as aforesaid, all such sums as may be found due from them to said estate.

And that your orator may have such further relief, or may have such other relief, as the nature of the case may require, and as shall be
22 agreeable to equity, may it please the court to grant unto your orator the writ of subpœna, to be issued out of this honorable court, to be directed to John A. Dutcher, Edward H. Ball, and John R. Goodrich, commanding them, and each of them, by a certain day, and under a certain penalty, to be and appear before the said court, and then and there to answer this bill of complaint, and to stand to and abide such order or decree therein as will be agreeable to equity and good conscience, and your orator, as in duty bound, will ever pray, &c.

ADONIRAN J. WRIGHT,
Assignee, &c.

E. P. SMITH, *Complainant's Counsel.*
E. MARINER, *Complainant's Solicitor.*

NOTE.—The said defendants are hereby required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21.

DISTRICT OF MINNESOTA, *ss:*

On this day of January, A. D. 1872, before me personally appeared the above-named Adoniran J. Wright, and made oath that he had heard read the above bill subscribed by him, and knows the contents
23 thereof, & that the same is true of his own knowledge, except as to those matters therein stated to be in his information or belief, and as to those matters he believes it to be true.

Whereupon a subpœna issued, returnable the first Monday of February next, as follows:

24 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

The President of the United States of America to John A. Dutch-
[SEAL.] er, Edward H. Ball, and John R. Goodrich, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the eastern district of Wisconsin, in our court of chancery in and for the district aforesaid, on the first Monday of February next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by Adoniram J. Wright, assignee of the estate of Neils Peterson, bankrupt.

And to do further and receive what our said court shall have considered in that behalf; and this you are not to omit, under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said John A. Dutcher, Edward H. Ball, and John R. Goodrich, if to be found in his district, and due return thereof make.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this ninth day of January, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-sixth.

EDWARD KURTZ, *Clerk.*

E. MARINER, *Solicitor.*

It is ordered by our said court that the said John A. Dutcher, Edward H. Ball, and John R. Goodrich, the defendants aforesaid, do enter their appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable as aforesaid; otherwise the bill filed may be taken as confessed.

25 *Return.*

Subpœna returned: "Served on the within-named John A. Dutcher, Edward H. Ball, and John R. Goodrich by delivering each of them, personally, a copy of this subpœna, this 10th day of January, 1872.

"C. S. HAMILTON, *Marshal,*
"By C. H. HAMILTON, *Deputy.*

"Fees: service, 6.00; travel, .18; copies, 1.20—$7.38."

(Indorsed:) Chancery C. Page 198. Adoniram J. Wright, assignee of the estate of Neils Peterson, bankrupt, vs. John A. Dutcher, Edward H. Ball, & John R. Goodrich. Subpœna. Filed January 11th, 1872.

26 MARCH 4, 1872.—This day came the defendants, by their solicitors, Messrs. Furches, Lynde & Miller, and filed their plea and answer, as follows:

Plea & answer.

The plea of John A. Dutcher, Edward H. Ball, and John R. Goodrich, defendants, to the bill of complaint of Adoniram J. Wright, complainant.

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill of complaint mentioned & contained to be true in such sort, manner, or form as the same are therein set forth and alleged, for plea to so much & such part of the said bill as seeks to impeach, annul, set aside, vacate, or in any manner invalidate the sale, assignment, and conveyance by the said Neils Peterson, in said bill named, of certain accounts, notes, mortgages, securities, evidences of debt, and choses in action to these defendants, copartners under the name of Dutcher, Ball, and Goodrich, as collateral security for the payment by said Peterson to these defendants of his indebtedness to them, and as seeks discovery to that end, these defendants plead thereto, and for plea say, that said conveyance, assignment, and transfer by the said Pererson to these de-
27 fendants was made, executed, and delivered by said Peterson to these defendants at the city of Rochester, in the State of Minnesota, on the 8th day of December, A. D. 1869, and not later; and that the said Neils Peterson was then and there indebted unto these defendants, for goods, wares, and merchandise before that time sold and delivered by them to him, in the sum of $1,741.12, and that said conveyance, assignment, and transfer was made as collateral security to said indebtedness.

That said Nels Peterson afterwards, and on the 8th day of April, A. D. 1870, and not earlier, filed his voluntary petition in bankruptcy, under the act mentioned in said bill, in the district court in and for the district of Minnesota, in the eighth circuit, under which he was thereafter adjudged a bankrupt, and the plaintiff elected his assignee in bankruptcy.

That the said transfer, conveyance, and assignment were not made or delivered by said Peterson or taken or received by these defendants within four months before the filing of said petition by said Peterson; nor was the said bill filed, or this suit brought, or these defendants, or either of them, served with any process of this honorable court
28 to answer said bill within two years from the time the cause of action, if any he had, accrued for such assignee; and these defendants plead the several matters aforesaid and the said act of Congress in the said bill mentioned in bar to so much of the complainant's said demand as aforesaid, and prays the judgment of this honorable court thereon.

And for a further, seperate, and additional plea these defendants allege that the circuit court of the United States in and for the eastern district of Wisconsin have no jurisdiction of the said matters in the said bill alleged, but, on the contrary thereof, that the district court of the United States in and for the district of Minnesota alone has jurisdiction of the subject-matters alleged in the said bill; and these defendants plead the want of jurisdiction of this honorable court in the premises in bar of this suit.

And these defendants, for answer in support of the above plea, admit that Adonirain J. Wright is, and for more than two years last past has been, a citizen of the State of Minnesota, and is assignee of the estate of Nels Peterson, bankrupt, and that these defendants are citizens of the State of Wisconsin, and admit and aver that on the 8th
29 day of April, 1870, and not earlier, said Peterson filed in the district of the United States for the district of Minnesota his petition to be declared a bankrupt under and in pursuance of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States;" that said district court then and there had jurisdiction thereof, and the said Peterson was thereafter and on the day of April, A. D. 1870, and not earlier, by the said district court duly declared and adjudged a bankrupt under said act of Congress, in accordance with the rules and practice of said district court; and further admit and aver that afterwards, and on the 28th day of April, A. D. 1870, said Wright, being a resident and citizen of said State of Minnesota, was duly appointed assignee of the estate and effects of the said Nels Peterson, and that said Peterson then was, and still is, a resident and citizen of said State of Minnesota; and further admit that afterwards, and on the day of , A. D. 1870, an assignment of the said estate, property, and effects of the said Nels Peterson was duly made to said assignee under and by virtue of said proceedings and the said act of Congress, whereby said estate, property, and effects
30 theretofore belonging to said bankrupt became and were absolutely vested in said assignee; and further admit that on the 8th day of December, A. D. 1869, the said Nels Peterson was, and for a long time prior thereto had been engaged in trade, doing business as a merchant in the city of Rochester, and State of Minnesota, in said district of Minnesota, and that on that day, and for a long time prior thereto, these defendants, John A. Dutcher, Edward H. Ball, and John R. Goodrich had been engaged in trade, doing business as merchants, under the firm-name and style of Dutcher, Ball & Goodrich, at the city of Milwaukee, in the eastern district of the State of Wisconsin.

And these defendants further admit and aver that on said 8th day of December, A. D. 1869, said Peterson was indebted to these defendants as said firm in the sum of one thousand seven hundred and forty-one dollars & twelve cents; that said indebtedness had accrued prior to said last-mentioned date, and was then and there owing from said Peterson to these defendants for goods, wares, and merchandise theretofore sold and delivered by them as said firm to him at Milwaukee aforesaid.

31 And these defendants, further answering, say they know not and have not been informed, save by the said complainant's said bill, and cannot set forth as to their belief, or the belief of either or any of them or otherwise, whether said Peterson was then on said 8th day of December, A. D. 1869, or had been for any time prior to that date, bankrupt or insolvent, or had committed any act of bankruptcy.

And these defendants, further answering, admit and allege that said Peterson did on the said 8th day of December, A. D. 1869, at Rochester, aforesaid, honestly, fairly, and without fraud or fraudulent intent or purpose, assign, transfer, and convey to these defendants a certain portion of his property in Minnesota, aforesaid, consisting of notes, accounts, and mortgages of the aggregate value of about two thousand dollars, and no more, as collateral security for the payment of his said indebtedness to these defendants; that said assignment, transfer, and conveyance was made by said Peterson and taken by these defendants in good faith, fairly and openly, and in the due course of business, and without any view, intent, or purpose on his part to give, or on their part to obtain or secure, a preference over or above other creditors of said Peterson. And they deny that said assignment, transfer, or convey-

32 ance was made or done in fraud of the creditors of said Peterson, or to secure an unlawful preference, or in fraud of the said act of Congress.

And these defendants, further answering, aver and state that said Peterson, at the date and place last aforesaid, stated to and repeatedly assured these defendants, & they then and there verily believe, that he was solvent and fully able to pay and secure all his just debts and liabilities.

These defendants, further answering, deny that any of these acts aforesaid or mentioned in the said bill of complaint were made or done in fraud of the said bankrupt act, and deny that they, or any or either of them, had then or there, or at any time or place, reasonable cause or any cause to believe that said assignment, transfer, or conveyance, or any of the acts aforesaid, or in said bill of complaint mentioned, were made or done with any view to prevent the said property, or any of it, from coming to the assignee in bankruptcy of the said bankrupt, or to prevent the same from being distributed under the said bankrupt act; and they deny that they had reasonable cause or any cause to believe that

33 such assignment, transfer, or conveyance, or any the aforesaid acts, or any acts in the said complaint mentioned, were made or done with a view to prevent said property in the said complaint mentioned or referred to, or any of it, from coming to the assignee in bankruptcy of the said bankrupt, or to prevent the same, or any of it, from being distributed under the said bankrupt act.

And these defendants, further answering, deny that said assignment, transfer, or conveyance was made or done to defeat the effect of said act in securing equal distribution of assets among creditors and to prevent fraudulent preference, and they deny that they or any or either of them had then or there reasonable cause or any cause to believe that such

assignment, transfer, or conveyance, or any or all the aforesaid acts, or any acts in the said complaint mentioned, were made or done to defeat the effect of said act in securing equal distribution of assets among creditors & to prevent fraudulent transfers, or that said assignment, transfer, or conveyance were made or done to defeat, impair, hinder, impede, or delay the operation & effect of the said act.

And these defendants, further answering, deny that they or any
34 or either of them had reasonable cause or any cause to believe that said assignment, transfer, or conveyance was made or done to impair, hinder, impede, defeat, or delay the operations or effect of the said act.

And these defendants, further answering, deny that the said assignment, transfer, or conveyance was made or done to evade the provisions of said act making void any conveyance of property with intent to give a preference to creditors, and deny that said assignment, transfer, or conveyance was made or done or was intended to be in fraud of said act, or that they or either or any of them then or there, or at any time or place, had reasonable cause or any cause to believe that the said Ne'ls Peterson was then in failing circumstances or insolvent.

And these defendants, further answering, allege that said Peterson had been and was accustomed to secure the debts due to his creditors by the transfer to them of notes, accounts, and securities, and that the said assignment, transfer, and conveyance to these defendants was in the usual and ordinary course of his business. They admit that on said 8th day of December, 1869, at Rochester aforesaid, they took into their possession, control, and custody all of the said property so
35 assigned, transferred, and conveyed to them; they deny that they removed or have since removed the same or any thereof to Milwaukee, in the eastern district of the State of Wisconsin. They allege that they delivered the whole thereof for collection to one Charles C. Willson, esq., who then resided and still resides in said city of Rochester, in the State and district of Minnesota, and that he still has the same or the avails thereof in Rochester aforesaid, and subject to the jurisdiction of said bankrupt court.

These defendants, further answering, deny that said Wright is unable to accurately ascertain and discover a full and particular description and statement of said property, or to ascertain or discover the amount of money collected thereon by these defendants; they allege that the schedules attached to the said Peterson's said petition in bankruptcy contain a full, complete, and accurate statement of the said property under the oath of the said Peterson, and that heretofore, to wit, on the 26th day of June, A. D. 1871, the said Charles C. Willson as attorney for these defendants furnished, made, and delivered to said complainant a full, complete, and accurate inventory and schedule of all said property, and of the collection and dispositions thereof, which ever since
36 has been and now is in said complainant's possession or under his control. That said statement was and is, to the best of the knowledge, information, and belief of these defendants, true, fair, correct, and accurate, and that said Wright has the aid, assistance, and process of said district court in bankruptcy in and for the district of Minnesota to obtain full discovery of any and all matters connected therewith, and these defendants have been and still are, and their said attorney has been and still is, ready and willing at all times to give and furnish any information, statement, schedule, or disclosure that said complainant can, could, or might at any time demand or require, and that without the aid or interference of this honorable court.

These defendants, further answering, deny that they conceal from the complainants said property, or any thereof, or any account of the same; they admit that complainant demanded all said property of them as alleged, but they allege that said demand was not accompanied by or with any offer to pay the said debt of said Peterson to these defendants, nor has the complainant at any time tendered or offered to pay said debt, or any part or portion thereof, nor was any such demand accompanied with any recognition of the lien of these defendants
37 upon said property for the payment of said debt, or any part thereof, but was made in hostility thereto, and based on the ground assumed by him that these defendants had no such lien or right in or to said property or any thereof, or right to be paid their said demand out of the proceeds thereof. These defendants admit that the complainant made the demand on the 21st day of December, A. D. 1871, as he has alleged in said bill of complaint. They allege that before they could confer with their said attorney, in whose hands said property was placed, the said bill of complaint was filed and this suit commenced. They admit that they refuse to deliver to complainant said property until their said demand against the said Peterson shall be first paid out of the collections of said securities, or by the said complainant, or otherwise satisfied.

These defendants deny that they claim to be the owners of said property; they only claim to have a lien thereon, and the right to the possessions thereof for the purpose of and until their said demand shall be paid out of the same. They admit that they claim to have lawfully
38 received said property as security for their said demand, and admit that the complainant is entitled to the residue thereof after the payment of their said demand and the necessary costs and expenses of collecting and securing so much thereof as will pay & satisfy the same.

These defendants deny each and every allegation of fraud and fraudulent act, intent, and purpose in said bill of complaint charged, and allege that all their & each of their actings and doings in the premises are just and equitable, and in consonance with the just rights and equities of all parties interested in any manner therein.

And these defendants claim and insist that said complainant has not in and by his said bill shown such a case as calls for the interference of this honorable court, and that a discovery of the several matters in the said bill contained could, if necessary, have been obtained in said district court of the district of Minnesota, in the proceedings in bankruptcy pending therein, and that that court has in fact jurisdiction of the subject-matter of this action, and full power and control over the said property, and the subject-matter of this suit.

39 Wherefore these defendants demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to said bill, or any of the matters or things therein contained; & they pray to be hence dismissed with their reasonable costs and disbues'ments.

FINCHES, LYNDE & MILLER,
Solis. for Defts.

H. M. FINCH,
Of Counsel.

EASTERN DISTRICT OF WISCONSIN, *ss:*

John R. Goodrich and John A. Dutcher, each for himself, being duly sworn, deposes and says that he has heard read the foregoing answer,

& that the same is true of his own knowledge except as to those matters alleged on information and belief, and as to these matters they believe the same to be true; and further saith not.

JOHN R. GOODRICH.
JOHN A. DUTCHER.

Sworn to & subscribed to before me this 4 March, 1872.

FR. BLOODGOOD,
U. S. Com'r E. D. Wis.

EASTERN DISTRICT OF WISCONSIN, *ss:*

John R. Goodrich and John A. Dutcher each for himself, being
40 duly sworn, says that the plea of the said defendants in and to portions and parts of the bill of complaint is not interposed for delay, and that the said plea is true in point of fact; and further saith not.

JOHN R. GOODRICH.
JOHN A. DUTCHER.

Subscribed and sworn to before me this 14th day of March, A. D. 1872.

FR. BLOODGOOD,
U. S. Com'r E. D. Wis.

I certify that in my opinion the plea of the said defendant is well founded in point of law.

H. M. FINCH,
Of Counsel.

MARCH 29, 1872.—"On motion of E. Mariner, complainant's solicitor, ordered that the plea in this cause be set down for argument at the next term of this court."

Plea overruled.

OCTOBER 23, 1872.—This day came the parties, by their counsel, and the plea of the defendants to the bill of complaint having been argued, on consideration thereof it is ordered by the court that the said plea be, and hereby is, overruled.

JANUARY 8, 1873.—This day came the complainant, by his counsel, and on his motion it is ordered by the court that the defendants
41 answer this bill of complaint by the first Monday of February next.

FEBRUARY 13, 1875.—This day came the defendants, by their solicitors, and filed their answer as follows:

Answer.

In chancery.

The joint and several answer of John A. Dutcher, Edward H. Ball, and John R. Goodrich to the bill of complaint of Adoniram J. Wright, assignee of the estate of Neils Peterson, bankrupt, complainant:

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say that they admit that the said Peterson filed his petition and was duly adjudged a bankrupt as alleged in said bill, and that said Wright was duly appointed assignee of the estate and

effects of said bankrupt, and that an assignment was duly made to the orator, and he thereby became and was vested with all the estate, property, and effects of said bankrupt. These defendants admit that
42 said Neils Peterson had been for a long time prior to said 8th day of December engaged in trade, doing business as a merchant in the city of Rochester and State of Minnesota, in said district of Minnesota, and that on that day and for a long time prior thereto these defendants had been engaged in trade and doing business as merchants under the firm-name and style of Dutcher, Ball and Goodrich, at the city of Milwaukee, in the eastern district of the State of Wisconsin.

And these defendants, in answer to the first interrogatory, say that on the 8th day of December, A. D. 1869, the said Ne'ls Peterson was indebted to said defendants in the sum of one thousand seven hundred and forty-one dollars and twelve cents; that said indebtedness was for goods, wares, and merchandize sold by said defendant' to said Peterson; that said indebtedness accrued in and during the year 1869; that the paper hereto annexed marked "Exhibit A" gives a statement of the account of said defendants against said Peterson, and which said exhibit is made part of this answer.

And said defendants, in answer to the second interrogatory, say that at the date of the maturity of said indebtedness they had no security for said indebtedness; that they at one time held two promissory notes for a portion of the same; that said promissory notes were surrendered to said Peterson, and said defendants have no copy of the same;
43 that on the 8th day of December, 1869, they took from said Peterson a promissory note for said sum of 1,741.12, and as collateral security to said indebtedness the accounts and notes named in the schedule hereto attached and made part hereof marked "Exhibit B."

And said defendants, in answer to the third interrogatory, say that they are not able to state how often they requested said Peterson to pay said indebtedness prior to the 8th day of December, 1869; that occasionally they would make out statements of balance due and send the same to said Peterson; that on the 8th day of October, 1869, the defendant John R. Goodrich had a personal interview with said Peterson at Rochester, Minnesota, in relation to said indebtedness; that defendants have no copies of any letters written to said Peterson, and said defendants are unable to state more of the substance of the same than that they enclosed statement and requested remittance of the same.

Said defendants, in answer to the fourth interrogatory, say that they received from said Peterson during the year 1869 the letters hereto attached; that they are all of the letters received during that year, and that they have no other letters in their possession or under their control received from said Peterson, and said defendants believe that the
44 said letters are all that they ever received from said Peterson.

Said defendants, in answer to the fifth interrogatory, say that they had knowledge on or about the 8th day of October, 1869, and were at that time informed, that said Peterson was owing one James Bonnell and the firm of Bradley & Metcalf, a portion of which indebtedness was due or unpaid, and that said defendant Goodrich was informed by a banker in Rochester that he held a note or draft of said Peterson's, but which was amply and fully secured by collaterals; that the said defendants did not inquire if said Peterson was indebted to third parties; that the defendant Goodrich inquired of said banker to ascertain the standing and credit of said Peterson, and was informed by said banker that Peterson was good and was worth twelve or thirteen thousand dollars above his indebtedness; that the said Peterson informed said Goodrich

that he had been making liberal payments on said indebtedness to Bonnell.

In answer to the 6th interrogatory, said defendants say that the defendant John R. Goodrich did have an interview with said Ne'ls Peterson on the 8th day of December, 1869, in relation to his indebtedness to said firm; that said interview occurred in the office of Charles
45 C. Wilson, of Rochester, Minnesota; said interview was for the purpose of obtaining an adjustment of said indebtedness; that Niels Peterson, the defendant John R. Goodrich, and said Wilson were present. Said defendant Goodrich said that he wanted an adjustment of the debt. Wilson said that Peterson was a poor collector; that he had a large amount due to him from farmers and others which could be collected, and which, if attended to and collected, would pay all of the indebtedness of Peterson and leave him a large surplus—a surplus of at least twelve to thirteen thousand dollars; to which statement said Paterson assented. And said Wilson proposed that out of said claims and demands the defendants should select enough to pay their debt; that the same be placed in the hands of said Wilson for collection, and that the proceeds thereof be applied to the payment of the indebtedness of the defendant, and the balance, after deducting the cost of collection, be paid to the said Peterson; that said Peterson at first assented to said arrangement, but afterwards he objected to go into the arrangement, as he did not want some of the claims pressed for collection, as they were good customers and he was afraid to offend them, & wanted they should be allowed their own time to pay; that during said conversation said
46 Goodrich took particular pains to inquire into the condition and value of the assets of said Peterson, and said Goodrich was assured by said Peterson and said Wilson that, as before stated, the assets were good and sufficient to pay every dollar of said Peterson's indebtedness and leave him a surplus of twelve to thirteen thousand dollars; and the defendant Goodrich, trusting and relying upon said representations, and believing the same to be true, finally consented to an arrangement such as was proposed by said Willson, and in good faith, and in the honest belief that said Peterson had available assets to pay all of his debts and have such surplus, took a portion of said claims and demands due to said Peterson, and which, when collected, should be in payment and satisfaction of the indebtedness of said Peterson to said defendants; and said defendants allege that at the same time the said Peterson was in possession of a valuable stock of dry-goods & groceries; and said defendants allege that at the time of the taking of said accounts and notes they had no reason to believe that said Peterson was insolvent or unable to pay his debts, but said defendants then honestly thought and believed that said Peterson had available assets more that enough
47 to pay his indebtedness, and to have a large surplus. And said defendants allege, upon information and belief, that if all the assets of said Peterson had, on said 8th day of December, or at about said date, been properly attended to and collected, as they might have been, said Peterson could easily, as these defendants believe, have paid his indebtedness out of them and had a large surplus.

Said defendants, in answer to the 7th interrogatory, say that said Peterson did turn out securities at the time, place, and in the manner stated in the answer to the last preceding interrogatory; that the same was taken as collateral security to his indebtedness to the firm of Dutcher, Ball & Goodrich.

In answer to the 8th interrogatory, said defendants say that said transfer was made to said defendants, and was made at the time and

place and under the circumstances stated in the answer to the fifth interrogatory.

Said defendants, in answer to the 9th interrogatory, say that said defendants did receive the said property so assigned on said 8th day of December, at Rochester, Minnesota, from said Peterson, and delivered the same to said Willson for collection; that, as defendants are informed and believe, said assignment did not take or exhaust all of the
48 available credits or choses in action of said Peterson, but a large and, as the defendants are informed and believe, a good class of such credits and choses in action remained in the hands or under the control of said Peterson; that said Goodrich, in connection with said Wilson and Peterson, selected those assigned to defendants from a general list furnished by said Peterson, and, at the request of said Peterson, some that Peterson did not want to be sued or the collections pressed were kept and retained by him, said Peterson.

In answer to the 10th interrogatory, said defendants allege that said securities or their proceeds are still in the hands of said Wilson, and have been ever since said assignment to him, except the sum of two hundred dollars paid by him on or about Nov. 21st, 1870.

In answer to the 11th interrogatory, said defendants say that none of said securities or their proceeds have ever been in the hands of the defendants at Milwaukee except the said sum of two hundred dollars paid as aforesaid.

In answer to the 12th interrogatory, said defendants say that the exhibit hereto attached gives the statement called for by this interrogatory.

Said defendants, in answer to the 13th interrogatory, say that
49 they have received no money from said securities, except the said sum of two hundred dollars, and as to the present condition or value of the same, or any of the matters inquired of, they have no knowledge; that no account has been rendered by their attorneys, said Wilson; that the said Wilson is ready and willing, and will, at any reasonable time, give to said plaintiff any and all information he may want on the subject inquired about, and said Wilson is when the process of said bankrupt court can reach him if said plaintiff prefers his examination on oath; and said defendants are informed and believe that said Wilson has once given voluntarily a statement, and these defendants believe he will again do so if asked.

Said defendants answer the 14th interrogatory by saying that the surplus, after paying the debt of these defendants and the costs and charges of collection, was to be returned to said Peterson. There was no agreement that Peterson should have any further credit for goods thereafter to be sold by defendants to him.

In answer to the 15th interrogatory, said defendants say that said Peterson did say that he should continue the business, and that he contemplated changing the location of his business in the spring following.

50 In answer to the 16th interrogatory, said defendants say that the reason they did not insist upon and receive cash in payment of their said claims at that time was that said Peterson said he had not sufficient cash on hand to there and then pay the same in full. Said Peterson claimed and insisted that he had plenty outstanding to more than pay all of his indebtedness and leave him a surplus of $12 to $13,000, which was good and available; that he did not want to press his debtors; that many of them were his best customers, and if he sued them he was afraid he would lose their trade, that if left alone they would

pay; that said Peterson had before turned out such securities to some of his creditors, and which had been paid by his debtors; that the only inducement held out to said Peterson for the making of the transfer to defendants was that if he did not pay or secure, the defendants would be obliged to sue their claim and collect it by due process of law; that said defendants were willing to take enough of the claims or debts due to him, Peterson, to pay in full this indebtedness to them, and the costs and expenses of the collection thereof, and await their collection. No agreement was made as to the rate on the dollar at which said
51 claim should be taken. It was thought by defendants and said Wilson that if said claims or debts due to Peterson was assigned and placed in the hands of said Wilson for collection that they would be sooner collected and the money sooner realized therein than would be the case if they remained with said Peterson, who was averse to suing them in his own name, and who admitted himself to be a slow collector; that said defendants fully believe that there was money enough in said assets, if attended to properly and promptly, to pay said debt in money as soon as the same, by due process of law, could be collected from Peterson, and said defendants had no doubt then that if all the assets of said Peterson had been seized or levied upon by execution or other process of law and sold, that the same would then have realized money enough to have fully paid all that said Peterson legally owed, and have left him a large surplus, and said defendants were as willing to take the responsibility of collecting enough of the said debts to pay the same as to sue and collect the same out of Peterson.

Said defendants, in answer to the 17th interrogatory, say they
52 had sold goods to said Peterson from and since the month of May, 1867; that the dates and amounts of said sales are given in said Exhibit A; that they had never before taken any such transfer, conveyance, or assignment of such assets in payment of, or as security for, his indebtedness accrued or to accrue.

In answer to the 18th interrogatory, said defendants say that said Peterson has never traded with said defendants since 8th day of December, 1869.

In answer to the 19th interrogatory, said defendants say that they do claim to hold the said property or its proceeds until the amount of their said debt is paid, together with the costs and expenses of the collection of the same; and said defendants do claim that said assignee has no right or title therein or thereto until payment of said indebtedness and the expenses of collection; and when paid these defendants suppose said assignee is entitled to the balance.

In answer to the 20th interrogatory, said defendants say a demand was made and in substance as inquired about.

In answer to the 21st, said defendants say that they did not comply with said demand because they claimed the said property as se-
53 curity for payment of their said indebtedness and said costs and expenses of collection.

And said defendants deny all of the allegations in said bill not herein specifically admitted.

And said defendants allege that they are entitled to hold the said property and securities free and clear of all claims of said plaintiff, as assignee of said Peterson, until their said indebtedness and charges are paid; wherefore said defendants demand judgment whether they shall be compelled to make any other or further answer to the said bill, or

any of the matters or things therein contained, and they pray to be hence dismissed, with their reasonable costs and charges, &c.

JOHN R. GOODRICH,
EDWARD H. BALL,
JOHN A. DUTCHER,
By FINCHES LYNDE,
Solicitors for said Defendants.

H. M. FINCH, *of Counsel.*

EASTERN DISTRICT OF WISCONSIN, *ss:*

John R. Goodrich, being duly sworn, says that he is one of the defendants, and was a member of the late firm of Dutcher, Ball & Goodrich, the defendants; that he has heard read the foregoing answer
54 and knows its contents, and that the same is true of his own knowledge except as to the matters alleged on information and belief, and as to those matters he believes it to be true. And deponent further says that he makes this verification on behalf of himself and his codefendants; that he did the business with said Peterson, and has more knowledge of the matters than his codefendants; and further saith not.

JOHN R. GOODRICH.

Subscribed & sworn before me this 10th day of February, A. D. 1873.

J. M. MILLER,
U. S. Com'r E. D. Wisconsin.

55 EXHIBIT A.

STATEMENT.

MILWAUKEE, *Jan.*, 1873.

Mr. N. Peterson, Rochester, Min., in account with Ball & Goodrich, 301 and 303 East Water street.

1867.				1867.			
May 22	Mdse		326 56	Aug. 20	Cash		200
July 19	"		459 49	Oct. 15	"		500
Aug. 20	"		342 35	Nov. 4	"		500
31	"		25 32	23	"		500
Oct. 15	"		938 76	1868.			
19	"		8 10	Jan. 20	"		16 66
Dec. 7	"		532 95	31	"		250 00
1868.				Apl. 21	"		500
Apl. 22	"		740 09	June 15	"		300
29	"		87 08	July 23	"		50
June 15	"		567 49	Nov. 23	"		380
July 21	"		545 66	Dec. 9	"		250
25	"		1 50	17	"		700
Aug. 29	"		455 87	1869.			
Sept. 1	"		43 82	May 25	Bills receivable		800
Oct. 10	"		152 16	Oct. 8	Cash		100
1869.				18	Bills receivable		700
Jan. 12	"		339 18	Dec. 11	Cash		115
Apl. 7	"		197 96	8	Bills receivable		1,741 12
21	"		206 91		Balance		37 56
Sept. 25	"		164 20				
Dec. 13	Interest		117 33				7,640 34
13	Bills recievable		650				
13	" "		700				
Dec. 13	Int. on notes		37 56				
			7,640 34				

Balance, 37.56; being interest on note credited May 25, $800, & note surrendered.

1870.

Nov. 21. Received $200 & endorsed same on note given Dec. 8, '69, of $1,741.12.

56 EXHIBIT B.—(Copy.)

I have this day assigned and delivered to Messrs. Dutcher, Ball & Goodrich notes and accounts against my customers of which lists are hereto attached, and the same are placed in the hands of Chas. C. Willson for collection as collateral security to my indebtedness to them. After he has collected or secured a sufficient amount thereof to pay my indebtedness to them, and expenses of collecting and securing the same, the balance of the notes and accounts are to be returned to me for value received.

Dated Dec. 8th, 1869.

(Signed) N. PETERSON.

Accounts.

Christopher Hope	$26 11
John & Edw'd Fitzgerald	232 70
James Campbell	25 80
Patrick Fogerty	184 87
Sievert Nelson	54 23
Evan Amondson	60 72
Peter Meandel	42 68
Edward Alvard	52 28
Halden Halderson	58 89
Wm. Hines	44 38
Michael McCanna	49 81
J. P. Adamson	63 21
Ole Torgeson	51 95
57 Andrew Olsen	64 43
John Meahon	31 16
Michael Olsen	18 80
P. Dougherty, (unknown)	
Thos. Kavner, (do.)	

Notes.

Patrick Fogerty	6-16-'69	$77 10
Do.	9-15-'68	50 00
Chas. Kruger	12-22-'68	18 00
Leonard Prior	5-20-'69	16 56
Do.	11-16-'69	17 70
Halden Halderson	6-15-'69	38 37
Carl A. Quale	9-30-'69	28 50
Bernard McLaughlin	6-29-'67	25 36
Ole N. Olsen	6-30-'69	38 85
Andrew Johnson	7-6 -'69	55 68
Charles H. Blackwood	8-6 -'69	66 56
Albert Fisher	12-12-'68	40 00
Iver Nelson	12-4 -'69	36 42
H. H. Quille	6-22-'69	19 80
Ole Olson	11-23-'69	54 73
Ole Fragnat	11-29-'69	34 77
Peter McCone	11-26-'69	57 65
Arne T. Boine	11-25-'69	32 20
Hendrick Moreson	6-2 -'69	$19 70
Jens. Anderson & surety	11-1 -'69	16 20

58	Syver O. Hougen	6-18-'69	26 25
	Michael Olsen	10-22-'69	15 90
	David Honeywell	11-26-'69	21 33
	Michael McCanna	6-2 -'69	93 92
	Do.	11-13-'68	60 00
	Edward Fitzgerald	5-20-'69	90 80
	Peter Maney	7-15-'79	70 50
	Do.	12-2 -'69	119 19
	John C. Buckley	11-13-'69	37 00
	H. C. Stage	9-10-'69	73 89
	R. C. Adams	12-1 -'69	135 55
	Do.	7-7 -'69	55 00
	Even Torkelson	6-28-'69	44 85
	Do.	11-29-'69	78 33
	Geo. Hanson	12-3 -'69	128 27
	Neils Tenson & surety	5-15-'69	75 08
	Do.	5-15-'69	50 00
	Jas. P. Adamson & surety	12-28-'68	92 94
	John Rooney & Mortz	8-4 -'69	153 50
	J. P. Adamson	1-10-'68	23 50
	George Hanson	12-11-'68	13 25
	P. M. Talbut	12-5 -'69	25 00

59 ROCHESTER, MINN., *Febr.* 17*th*, 1869.

Messrs. DUTCHER, BALL & GOODRICH,
Milwaukee, Wis.:

GENTS.: I am very sorry I cannot send you any money to-day, and it looks so money will not be gotten for a while. I hope you will please wait me, and I shall try my best as soon as possible. No collection; no trade.

Yours, very truly,

N. PETERSON,
P'r T. A. TENNESON.

ROCHESTER, MINN., *May* 10*th*, 1869.

Messrs. DUTCHER, BALL & GOODRICH,
Milwaukee:

GENTS.: In last bill I found 5 bed-cords too short, and I should wish you will rectify it. Times are very dull now; but I hope money will be easier to get in a short time, and I shall then do my best for you. I have moved into my new store.

Yours, very truly,

N. PETERSON,
P'r T. A. TENNESON.

ROCHESTER, MINN., *May* 15*th*, 1869.

Messrs. DUTCHER, BALL & GOODRICH,
Milwaukee, Wis.:

GENTS.: I found those bed-cords in the wash-tubs, and I hope you will excuse for troubling you about it. Times have been very
60 dull; but I believe that the trade will be better in a short time. I will send you money as soon as possible.

Yours, very truly,

N. PETERSON,
P'r T. A. TENNESON.

ROCHESTER, MINN., *July 2d*, 1869.

Messrs. DUTCHER, BALL & GOODRICH,
Milwaukee, Wis.:

GENTS: I am sorry I cannot send you any money to-day, as I see my bank notice is due to-morrow. If it should be impossible for me to pay it to-morrow, you shall have it sure the fifth of this month. Times are very dull; no money at all. It has been raining for twelve days, and then you know what kind of business we have had.

Yours, very truly,

N. PETERSON,
P'r T. A. TENNESON.

ROCHESTER, MINN., *July* 26, 1869.

Messrs. DUTCHER, BALL & GOODRICH,
Milwaukee, Wis.:

GENTS: My note due in the bank to-day I am sorry I cannot pay, but I shall try my best some time this week. It is very hard to get hold of money now, but in a short time I guess it will be better.

Yours, very truly,

N. PETERSON,
P'r T. A. TENNESON.

61 ROCHESTER, MINN., *July 12th*, 1869.

Messrs. DUTCHER, BALL & GOODRICH,
Milwaukee, Wis.:

GENTS: Enclosed please find a draft on $150.00, which you will please to endorse on note. I am sorry I could not send you full amount the fifth as I wrote to you; I was promised some money from a few of my customers, but I did not get anything. As soon as possible I shall send you the balance. Times are very dull.

Yours, very truly,

[OVER.]

N. PETERSON,
P'r T. A. TENNESON.

In about a month times will be better, and I hope you will not be too hard with me.

Yours, &c.,

N. P.
P'r T. A. T.

ROCHESTER, MINN., *Aug. 9th*, 1869.

Messrs. DUTCHER, BALL & GOODRICH,
Milwaukee, Wis.:

GENTS: I am very sorry I cannot send you any money. Harvest is just commenced, and I do hope it will not be long before I can pay you. Money is not to be gotten less than two per cents a month.

Yours, very truly,

N. PETERSON,
P'r T. A. TENNESON.

62 *Stipulation.*

U. S. circuit court for the eastern district of Wisconsin. In equity.

ADONERAM J. WRIGHT, ASSIGNEE OF NEILS Peterson, a bankrupt,
vs.
JOHN A. DUTCHER ET ALS.

It is agreed and stipulated that the annexed statement & schedule of accounts made by Charles Willson, of Rochester, in the State of Minnesota, be attached by the defendants to their answer in the above

cause as part & parcel thereof, and that thereupon, on the complainant's filing his replication, the said cause shall be considered & treated as at issue, and the exceptions heretofore interposed to the answer herein be waived and withdrawn.

E. MARINER, *Complt.'s Sol'r.*
FINCHES, LYNDE & MILLER,
Sol'rs for Deft.

AUGUST 28, 1873.

63 Name of debtor.	Amt. of Peterson's claim.	Disbursements paid out.	Charges.	Amounts collected.	When collected.	Date of judgt.	Amount of judgt. unpaid.
1. Christopher Hope	$26 11	$7 10	$10			Apr. 5, '72	$38 10
2. Jno. & Edw'd Fitzgerald	232 70						
*. Edw'd Fitzgerald	90 80	1 32	25				
3. Jas. Campbell	25 80	3 20	5	$31 60	Oct. 27, '70		
4. Patrick Fogerty	184 87						
Do	77 10	36 70	50			Mch. 16, '70	347 63
Do	50 00						
5. Seivert Nelson	54 23						
6. Evan Amundson	60 72	3 50	10	66 54	June 18, '70		
7. Peter Mundel	42 68		3	45	June 17, '70		
8. Edw'd Alvard	52 28	6 25	10	62	May 31, '70		
9. Halder Halderson	58 89		10	58 21			
Do	38 37			9 44	Dec. 14, '69		
10. Wm. Hinds	44 38	43 20	40	66 71	Nov. 11, '71	60 acres of land.	$100
11. Michael McCanna	49 81						
Do	93 92	33	50				
Do	60 00			311	Dec. 16, '71		
12. Jas. P. Adamson	63 21						
Do	23 50	26 75	35	256 95	Feb. 4, '73		
Do	92 94						
13. Ole Torgeson	51 95						
14. Andrew Olson	64 43						
15. John Mahon	31 16						
16. Michael Olson	18 80						
64 17. P. Dougherty							
18. Thos. Kavner							
19. Chas. Kruger	18 00	4 80	5	26 94	Nov. 30, '70		
20. Leonard Prior	16 56	3 80	5	40	Nov. 1, '70		
Do	17 70						
21. Carl A. Quale	28 50	6 10	5			Nov. 4, '70	35 65
22. B. McLaughlin	25 30		5	40	Dec. 24, '72		
23. Ole N. Olson	38 85	5 85	5			Nov. 4, '70	49 75
24. Andrew Johnson	55 68	9 90	10	74 70	Oct. 1, '70		
25. Chas. H. Blackwood	66 56	14 32	10			May 20, '70	85 81
26. Albert Fisher	40	4 40	5	54 12	Oct. 31, '70		
27. Iver Nelson	36 42		5	37 20	Feb. 17, '70		
28. H. H. Quille	19 80	3 20	5	26 36	Nov. 3, '70		
29. Ole Olsen	54 73						
30. Ole Fraaguat	34 77			36 90	June 3, '70		
31. Peter McKone	57 65	4 32	10	68 35	Nov. 1, '71		
32. Arne T. Boni	32 20	3 85	5	22 25	Nov. 2, '70		
33. H. Mouson	19 70		5	22 50	Aug. 2, '70		
34. Jens. Anderson & al	16 20	3 35	5	20 89	Oct. 25, '70		
35. Syaer O. Haugen	26 25						
36. Michael Olson	15 90		2				
37. David Honeywell	21 33		5	23 10	Aug. 1, '70		
38. Peter Meney	79 50	30 40	50			Aug. 18, '73	308 41
Do	119 19						
39. Jno. C. Buckley	37 00	3 30	5	41 10	July 25, '70		
40. H. C. Stage	73 87	12 75	10	91 20	Feb. 22, '70		
41. R. C. Adams	135 55	8 68	20	217 95	Nov. 18th, '70		
Do	55 00						
65 42. Even Torkeldsen	44 85	24 54	25	160 93	Sept. 16, '70		
Do	78 33						
43. Geo. Hansen	128 27	18 25	25	170 25	June 19, '71		
44. Neils Tenson & al	75 08						
Do	50			81 08	Jan. 17, '70		
45. John Rooney	153 50	3 00	10	15 35	Aug. 4, '70	Mortgage.	$151 50 & int.
46. Geo. Hanson	13 25		1 50	16 52	Dec. 11, '69		
47. P. M. Tolbert	25		5	28 20	Fall of 1871		
		335 70	491 50	2,223 34			

Memorandum of my doings in the matter of the claims assigned by N. Peterson to Dutcher, Ball & Goodrich on Dec. 8th, 1869, & placed in my hands for collection by the parties.

1st. Christopher Hope account, $26.11, sued deft. June, 1871; cause settled July 7th for deft.'s note, with Phillip Hope, jr., as surety for debt $26.11, int. $3.13, costs $1.00. New note not being paid on March 23d, 1872, sued both makers before L. L. Eaton, J. P., & on April 5th, 1872, obtained judgt.; dam., $33; costs, $5.10; on March 3rd, 1873, transcript of judgment was docketed in district court Olmsted County, fees, $1.00. Total costs paid out by me, $7.10; nothing collected; my charges, $10.00.

66 2d. Jno. & Edw'd Fitzgerald, jr., account $232.70, and Edward Fitzgerald's note, 5, 20, '69, $90.80. On December 21st, 1869, took Jno. & Edw'd Fitzgerald's note for $500, secured by chattle mortgage on threshing-machine & grain, &c. The account and note then amounted to $331.85, & defendants were trading with and owing Peterson other claims, & so made this note for $500. Made two copies of the chattle mortgage; filed one in Racine, Mower Co., and the other in the town of Rochester, each stamped 50 cts. As there was a joint interest with Peterson's assignee in b'g'cy in this security, I turned the mortgage into his hands to be looked after and collected. I got security, & the claim into good shape, for which I charged $25.00. The defts. were worthless.

3d. James Campbell, account $25.80. I took deft.'s note Jan'y 5, 1870, for $25.85. On October 19th, 1870, I brought suit on the note before L. L. Eaton, justice of the peace. Paid Sheriff Brown for serving the summons $2.70, and J. P. fees 50 cts. Oct. 27, 1870, received $31.60, in full of the demand, the note $25.85; interest, $2.58; sheriff, $2.70; J. P., 50 cts. My charges for this collection & suit, $5.00.

67 4th. Patrick Fogerty, ⅔ $184.87, and note, 6, 16, '69, $77.10, and note, 9, 15, '68, $50. I brought suit in district court on all these claims Feb. 17, 1870, & obtained judgt. March 16, 1870, for damages, $333.08, and costs, $14.55, & issued execution, which was returned unsatisfied. On Apr. 24, 1872, I got out 2d execution, & she'ff levied on deft.'s crops on the ground. Daniel Ryan made claim to the growing grain, & served affs., & W. D. Hurlbert made claim to it and served affidavits and demand. I indemnified the sheriff and he advertised & sold the grain to me for plaintiff for the small sum of $85. Paid sheff.'s fees on this execution, $7.75, & paid Swartwood for watching the grain $16.50. Could get no one to thresh the grain for fear of being sued. Finally deft. & Hurlbert & Ryan united, threshed the grain secretly, & stole it all away before I learned of their doings. They have all (except Ryan) been enemies of mine ever since. For ex'ns I paid $2.90. The 3d execution was issued March 23d, 1872. Total money paid out by me in this matter $36.70. Collected nothing yet. My charges in this case, $50.

68 5th. Seivert Nelson, ⅔ $54.23. Have never done anything in this. Paid out no money; have no charge. The reason nothing was done was:

6th. E. Amundson, ⅔ $60.72; settled with him Dec. 18, 1869, & took his note for $59.53, with interest. On May 31st, 1870, I brought suit in district court on the note, & on June 18, 1870, he paid up in full of note & interests & costs, $66.50, viz, note, $59.53; interest, $3.56; she'ff & clerk fees, $3.50.

7th. Peter Mundel, ⅔ $42.68. On the 29' Dec., 1870, obtained debtor's note for the amount, $42.68, which note was on June 17, 1870, paid, with interest, 12 %, $45. No disbursements. My charge, $3.00.

8th. Edward Alvord, a/c $52.28. On the 10th Dec., 1869, I brought suit in the district court on this account, as deft. refused to pay it. After the papers were made & served deft. came in & gave his note for the claim and disbursements, $6.25; total, $58.53. Afterward, on May 31, 1870, he paid the note, $62.00. Disbursements, $6.25. My charges, $10.00.

69 9th. Halder Halderson, a/c $58.89, and note 6, 15, '69, for $38.37. Deft. gave his note on the 14th Dec., 1869, for $58.21, in full of the account, and at same time paid cash $9.44, in full of the note. He had paid Peterson the balance of the old note. The new note he paid soon after. My charges & for costs and disbursements in this matter, $10.00.

10th. William Hinds, a/c $44.38. He was also surety on a note of J. P. Adamson for $92.94. Suit was commenced on both a/c & note, Feb. 17, 1870, and March 16, 1870, judgment was obtained for damages, $151.75, and costs, $14.15. Mch. 21 execution was issued, and was afterwards returned wholly unsatisfied. 2d execution was issued & real estate levied upon, advertised, & sold November 7, 1870, to John R. Goodrich, as follows: N. W. ¼ sec. 32, T. 105, R. 15, sold for $50. N. 60ª of E. ½ N. E. ¼, sec. 2, T. 106, R. 15, sold for $140.00. W. ½ N. W. ¼ of N. E. ¼ of S. E. ¼, sec. 4, T. 107, R. 15, sold for $12.35. Total, $202.35. Costs and disbursements in the judgt. $14.15; 2d ex'n, $1.00; printer's fees, $8.55; register, $4.00; stamp, 50c.; sheriff's fees on the execution, $15; total, $43.20. Damages in the judgt., $151.75. Int., $7.40 = $159.15. These disbursements, damages, & int., make $202.35, the amount

70 of John R. Goodrich's bid. Nov. 7th, 1871, received of sheriff in redemption of N. W. ¼, sec. 32, T. 105, R. 15, $53.50; and on Nov. 11th, 1871, of Huber Bastian, $13.21 in redemption of the five acres of timber. The 60 acres was never redeemed. Deft. claims this 60 acres as his homestead, & threatens to bring suit to set aside sale. J. P. Adamson has since paid the note included in this judgment. The $66.71 received for the two redemptions will cover disbursements; and if he will now pay the account, $44.38 & interest, and the balance of attorney fees, I recommend to give him a quitclaim deed of the 60 acres. Disbursements, $43.20; my charges, $40.

11th. Michael McCanna, a/c $49.81 and note, 6-2-'69, $93.92, and note, 11-13-'68, $60.00. These notes and account were computed & settled & payments allowed on Dec. 15, 1869, & $188.75 found due. I obtained that day a 3d mortgage on deft.s' farm for the debt, & $3.50 expenses of stamps, drawing, & recording, making a mortgage for $192.23 to John R. Goodrich. I foreclosed this mortgage & the land was sold February 20, 1871, to John R. Goodrich, for $293.88; and on Dec.

71 16, A. D. 1871, deft. redeemed the land by paying $311, expenses included in the mort'g $3.50; printer's fees on sale, $11.40; sheriff, $3; register of deeds, $4; aff's, 50 cts.; stamps, 50 cts.; abstract, $5.00; atty. fee, $50.00, in the mortgage; interest on the disbursements, $5.10; total, $83. Debt, $188.75; it. 12 %, 14 1-6 months to day of sale, Feb. 20, 1871=$26.74, and interest on the whole 10 months at 7 per cent. to the time of redemption, $12.67, makes $228.06; debt collected Dec. 16, 1871, without expense to the fund in any way.

12th. Jas. P. Adamson, a/c, $63.21; and note, 1-10-'68, $23.50; & note, 12-28-'68, $92.94, on which Wm. Hinds was surety. On Feb. 17, '70, I brought suit against Adamson in the district court, & on M'ch 16, 1870, obtained judgment by default for damages $201.15, & costs $14.15. Issued execution March 21, 1870, & sheriff levied on deft.'s growing crops. Aug't, 1870, settled the levy by taking of deft. agree

ment, with Hennesy as surety, for 150 bushels wheat; Dec. 15, 1870, received the wheat & sold it for 80 ct. per bushel, paid sheriff fees on the execution $7.70, & balance, $112.30, applied on judgment.
72 Issued 2d execution April 24, 1871, & under it sheriff again levied on crops; Aug't 14, 1871, I received affidavit of D. Heaney that he owned the crops, and on Nov. 11, 1871, sheriff returned this execution unsatisfied. On May 18th, 1871, obtained of defendant chattel mortgage on his crops & other property to secure payment of the balance of the judgment—judg't, $215.30; int., 1 y'r, 7 %, $15.07; she'ff fees on ex'n, $7.70=$238.07. Paid by 150 bushels wheat, at 80 cts., $120, leaving balance $118.07; int. 14 mo., @ 7 %, $9.64; & chattle mortgage, $1.50; stamp, 50 cts.; filing, 10 cts.; made $130.80, amount due May 18, 1872. February 4th, 1873, I received of deft. $136.95 in full of the chattle mortgage & discharged the judgment. Disbursements paid out include taxed costs, $14.15; 2d ex'n, 90 c.; she'ff $1; 3d ex'n 90 c.; she'ff's fees on 1st ex. $7.70; chattle mortg., $2.10; total, $26.75; my charges, $35.00.

13th. Ole Torgeson, a/c $51.95. Have never done anything with this, as I saw no prospect of getting it.

14th. And'rew Olsen, a/c $64.43. Nothing has been collected on this claim.

73 15th. John Mahon, a/c $31.16. Nothing has been collected on this claim.

16th. Michael Olsen, a/c $18 80. Nothing has been collected on this claim.

17th. P. Dougherty a/c. He owed Peterson nothing as he claims. Nothing realized.

18th. Thos. Kavner a/c. Don't know who this is; have never heard of him. Nothing obtained.

19th. Charles Kruger, note, 12–22–'68, $18.00. Oct. 21, '70, brought suit on this note in justice court, before L. L. Eaton, J. P., and on November 4 got judgment for damages $22.14, & costs $4.80; and on November 30, 1870, I received of the justice the $22.14, he retaining the costs. Disbursements, $4.80; my charge, $5.00.

20th. Leonard Prior, note, 5–20–'69, $16.50; & note, 11–6–'69, $17.70; on Feb'ry 17th, 1870, settled with deft. & got cash $10, & his note for $26.24 more; & on Oct. 21, '70, brought suit on the note in justice court, before L. L. Eaton, J. P., & paid Sheriff Brown for serving sum-
74 mons, $3.30; J. P. fees, 50 c.; on Nov'r 1st, 1870, received $30, & indorsed $26.20 of it on the note & discontinued the suit; balance of the note remains unpaid. Disbursements, $3.80; my charge, $5.00.

21st. Carl A. Quill note, 9–30–'69, $28.50. On the 21st day of October, A. D. 1870, I commenced suit in justice court on this note, & on the 4th Nov., 1870, got judgment for damages $31.25, costs $4.40. On Dec. 1st, 1870, execution was issued and returned unsatisfied, & on Dec. 3, 1870, judg't was docketed in the district court; fees for transcript & docketing in district court, $1.70. Disbursement, $6.10; my charges, $5.00.

22nd. Bernard McLaughlin note, 6–29–'67, for $25.36. Deft. worthless, but on Dec. 24, 1872, he paid $40, in full of the note.

23d. Ole N. Olsen note, 6–30–'69, $38.85. Sued this note Oct. 21, 1870, & got judgment Nov. 4, 1870, before L. L. Eaton, justice of the peace, for damages $45.15, costs $4.60; Dec. 1st, 1870, issued execution, which was returned unsatisfied, on March 23d, 1872, issued 2d execution, which subsequently returned unsatisfied, with $1.25 costs. Nothing has
75 been realized on this judgment in any way.

24th. Andrew Johnson note, 7-6-'69, $55.68. April 13th, 1870, brought suit in the district court on this note; on Apr. 30, 1870, settled with deft. for new note for $71.15, at 5 months, with T. Danielson surety; old note $55.68, interest $5.57, costs $9.90=$71.15. The note was paid at maturity, $74.70, Oct. 1, 1870. Disbursements, $9.90; my charge, $10.

25th. Charles H. Blackwood note, 8-6-'69, $66.56. On Feb. 18, 1870, commenced suit on this note in district court, & on May 24th, 1870, got judgment; damages $72.88, costs $12.93. On May 25, 1870, transcript was filed and judgment docketed in Wabasha County, a' 9⅛ a. m. June 4th, 1870, execution was issued to Wabasha County sheriff, & was returned July 11, 1870, wholly unsatisfied; fees $1, postage 39c. Disbursements, $14.32; my charge, $10.

26th. Albert Fisher note, 12-12-'68, $40. On Dec. 15, 1869, I got new note for this old one for $45; on Oct. 19, 1870, I sued deft., & on Oct. 28, 1870, obtained judgment before L. L. Eaton, justice of the peace,
76 for damages $49.72, and costs $4.40, and Oct. 31, 1870, I received of deft. $54.12 in full of the judgment. Disbursements, $4.40; my charges, $5.00.

27th. Iver Nelson note, 12-4-'69, $36.42; on Feb'y 17, 1870, I got new note of deft. for $37.20, which he subsequently paid in installments in full; my charge, $5.00.

28th. H. H. Quille note, 6-22-'69, $19.80. On Oct. 25, 1870, I brought suit on this note; on Nov. 3d, 1870, deft. paid up the note, $23.16, & paid the costs, $3.20. Disbursements, $3.20; my charges, $5.00.

29th. Ole Oleson note, 11-23-'69, $54.73. Peterson withdrew this note a few days after Dec. 8th, 1869, & sold it to F. W. Pearsall for $50, to get money to pay H. J. Cipperly & Co.

30th. Ole Fraaguat note, 11-29-'69, $34.77. Obtained judgment on this note June 3d, 1870. It then amounted to $36.90; my charge, $5.00.

31st. Peter McKone, 11-26-'69, $57.65. On Feb'y 18, 1877, brought suit on this note in district court; on Feb. 22d, 1870, deft. settled
77 & paid $24 cash, & gave new note, with Thos. McCoy as surety, for balance. Note, $57.65, interest $1.73, disbursements of the suit $4.22; total $63.60; paid $24, & gave new note for $39.60. On November 1st, 1871, sued the new note before R. H. Gove, justice peace, & got $44.35 in full of this note, & deft. paid the disbursements in the justice's court. District court disbursements, $4.22; my chg., $10.

32d. Arnie T. Boni, 11-25-'69, $32.20. Oct. 25, 1870, brought suit on this note before L. L. Eaton, justice of the peace; deft. presented receipt for $16 paid to Peterson; balance due on the note $18.40, & costs to Sheriff Brown $3.35, the justice 50c, total costs $3.85. Deft. paid balance due on the note & the costs, $22.25, Nov. 2d, 1870. Disbursements, $3.85; my charge, $5.00.

33d. Hendrick Mouson, 6-2-'69, $19.70. I collected this note in August, 1870, and got $22.50; my charge, $5.00.

34th. Jens Anderson & Hans O. Thomess note, 11-1-'69, $16.20.
78 Dec. 18, 1869, recd. $5 on this note. Oct. 21, 1870, sued the defts. for balance of the note, before L. L. Eaton, justice of the peace. On Oct. 25, they came in & paid up note, $12.54, & costs, $3.35; viz: Sheriff Brown $2.85, & justice 50c. Disbursements, $3.35; my charge, $5.00.

35th. Syaer O. Haugen note, 6-18-'69, $26.25. This note had been sued by Peterson, in Mower County, before he assigned it to Dutcher, Ball & Goodrich, and on learning that fact, in January, 1870, they, by me, delivered the note back to Peterson to send to Mower County to en-

able him to take judgment. Nothing has been received by me on this matter.

36th. Michael Olson note, 10-22-'69, $15.90. On March 23d, 1870, obtained new note for $20; this includes the old note & some a/c. Nothing has been collected on it. Deft. lives in Mower County. Charge, $2.

37th. David Honeywell note, 11-26-'69, $21.33. Collected this note, after much dunning, Aug't 1, 1870, $23.10. My charge, $5.00.

38th. Peter Meney note, 7-15-'69, $79.50, and note 12-2-69,
79 $119.19. On Dec. 21, 1869, obtained new note, and mortgage on his farm as security. Old notes, $198.69; interest, $4.14; expenses of mortgage, stamps, and recording, $3.50; total, $206.33. There were prior mortgages on the same land. On January 6, 1871, commenced foreclosure of this mortgage, & on Feb. 20, 1871, land was sold for $80 to me, in trust for Dutcher, Hall & Goodrich. Note, $206.33; interest, $28.80=$235.13. Costs: atty., $50; printer, $11.40; she'ff, $3.00; register, $4.00; aff's, 50c.; stamp, 50c; abstract, $4.50; total, $73.90. The prior mortgages were soon after foreclosed, & I failed to sell the land subject to such prior mortgages, & the title acquired by this foreclosure was lost. I verbally bargained away the land once to a neighbor for enough to pay this claim, but before writings were drawn he backed out, so atty. fees and $23.90 were lost. On Jan'y 16, 1873, I brought suit on the note, & on August 18, 1873, obtained judgment, for damages $296.91 and costs $11.50, which there is a fair prospect of now collecting. The total disbursements paid out are $30.40. My charges in this matter, $50.

80 39th. J. C. Buckley note, 11-13-'69, $37.00. Brought suit on this note before L. L. Eaton, justice peace, July 12, 1870, & on the 25th July, 1870, deft. paid note & interest, $37.80, & sheff. and justice fees, $3.30. Disbursements, $3.30; my charge, $5.00.

40th. H. C. Stage note, 9-10-'69, $73.87. Commenced suit on this claim in the district court, Febr'y 17, 1870, and on the 22d Feb., 1870, deft. gave mortgage on his farm to secure the debt, $73.87; interest, $4.58; costs in suit, $9.25; mortgage, $1.50; stamp, 50c.; recording, $1.50; total, $91.20. He afterwards paid the mortgage, but the exact date of payment I cannot now tell, having failed to enter it in my books. Disbursements, $12.75; my ch'g., $10.

41st. R. C. Adams note, 12-1-'69, $135.53; & note 8-7-'69, $55.00. On Dec. 31, 1869, obtained mortgage on deft.'s farm to secure these debts. Two notes and interest, after deducting indorsement, amounted to $188.57; disbursements for mortgage, stamps, abstract, recording, &c., $8.68; making mortgage, $197.25. This mortgage he paid No-
81 vember 18, 1870, with 12% interest, $217.95. Disbursements, $8.68; my charge, $20.00.

42d. Even Torkeldsen note, 6-28-'69, $44.85; and note 11-29-'69, $78.33. Brought suit on these notes in the district court, and on May 20, 1870, obtained judgment. Damages, $132.95; costs, $14.75. Issued execution to She'ff Brown & he levied on crops on farm of Joel Scott. Deft. is his tenant. Sept. 16, 1870, rec'd of Scott $160.93, in full of judgment, interest, & sheriff's fees on execution, viz: judg't, $132.95; costs, $14.75; interest, $3.44; sheriff's fees on the execution, $9.79; total, $160.93. Disbursements, $24.54; charge, $25.

43d. Geo. Hansen note, 12-3-'69, $128.27. June 7th, 1870, I brought suit on this note in the district court. Deft. employed Tolbert & George, attys., and put in an answer. On Jan'y 27, 1871, I got judgment for damages, $152.00, & costs, $18.25; & received $100 on the judgment

and agreed to wait for the balance, which was paid June 19th, 1871. Disbursements, $18.25; my charge, $25.

44th. Neils Tenson & surety note, dated May 15, 1869, for
82 $75.00; note of same date for $50. Dec. 28th, 1869, Peterson took these notes and delivered them to C. H. Chadborn, who brought suit on them in name of N. Peterson, and on Jan'y 17, 1870, returned as net proceeds of the notes realized over all costs $81.08.

45th. John Rooney note & mortgage, 8, 4, '69, for $153.50, 10 % interest. Augt. 4, 1870, I recd. one year's interest on this mortgage, $15.35. I got an abstract of the land $3—, & got a prior mortgage to Geo. Baihly paid off & discharged of record & got the owner of the land, Blakely, who bought of Rooney, to pay up all back-taxes to tax of 1873. Disbursements, $3.00; charge, $10. This is a first mortgage on forty acres of land and is worth its face.

46th. George Hanson note, 12, 11, '68, $13.25. This note was paid Dec. 11th, 1869, $16.52.

47th. P. M. Tolbert note, 12, 5, '69, $25. This note I collected in fall of 1871. Can't tell the date. By repeated duns, got it by giving him credit for it on another matter between us, $28.20. My charge, $5.00.

83 *Exceptions to answer.*

FEBRUARY 17, 1873.—This day came the complainant by his solicitor, and filed exceptions to answer.

Set down for hearing.

MARCH 3, 1873.—Exceptions for insufficiency having been filed to the answer of the said defendants on the 17th day of February, 1873, and the said defendants not having submitted to answer said exceptions, on motion of E. Mariner, solicitor for complainant, it is ordered that said exceptions be set down for hearing on the next rule-day, viz, the first Monday of April, A. D. 1873, before the honorable Andrew G. Miller, judge of the said court, at the U. S. court-room in the city of Milwaukee.

JULY 19, 1873.—This day came the parties by their solicitors, and filed their stipulation in writing, that a commission issue herein directed to Henry C. Butler, esq., of Rochester, Minnesota, to examine under oath Charles C. Willson of the same place, said testimony to be used by either of the parties hereto, and filed interrogatories to be annexed to said commission. And same day commission issued.

AUGUST 23, 1873.—Depositions received from post-office and filed.

84 *Stipulation & withdrawal of exceptions.*

AUGUST 28, 1873.—This day came the parties, by their solicitors, and filed their stipulation in writing that the statement and schedule of accounts annexed thereto, made by Charles Willson, of Rochester, Minnesota, be attached to the answer of the defendants as part & parcel thereof, and that the exceptions to said answer be withdrawn. Whereupon said statement and schedule of accounts was attached to the answer.

And came the complainant, by his solicitor, and filed his replication, as follows:

Replication.

In the circuit court of the United States for the eastern district of Wisconsin. In equity.

The replication of Adoniram J. Wright, as assignee of the estate of Niels Peterson, a bankrupt, complainant, to the answer of John A. Dutcher, Edward H. Ball, & John R. Goodrich, defendants.

The replicant, saving & reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says: that he will aver, maintain, & prove his bill of complainant to be true, certain, & sufficient in the law to be answered unto; and that the said answer of the said defendants is
85 uncertain, untrue, and insufficient to be replied unto by this repliant; and that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein & hereby well & sufficiently replied unto, confessed, & avoided, traversed or denied, is true. All which matters & things this repliant is and will be ready to aver, maintain, & prove as this honorable court shall direct, and humbly prays as in & by his said bill he has already prayed.

E. MARINER,
Complt's Solr.

SEPTEMBER 27, 1873.—Depositions received from post-office and filed.

FEBRUARY 18, 1874.—Deposition of John R. Goodrich, received from E. Kurtz, U. S. com'r, and filed.

And afterwards, to wit, at a stated term of said court, begun and held according to law, at the city of Milwaukee, in said district, on the first Monday (being the fifth day) of January, 1874, and on the forty-sixth day thereof, to wit, on the 5th day of March, A. D. 1874, present and presiding, the honorable Thomas Drummond, circuit judge, the following proceedings were had, to wit:

86 *Hearing.*

ADONIRAM J. WRIGHT, ASSIGNEE OF THE estate of Neils Peterson, bankrupt,
vs.
JOHN A. DUTCHER, EDWARD H. BALL, & JOHN R. Goodrich. } In equity.

This day this cause came on to be heard upon the pleadings and proofs, and was argued by Messrs. Smith & Ordway for the complainant, and by Mr. H. M. Finch for the defendants, and, being submitted, the court took the same under advisement.

And on said hearing the following testimony was read in evidence.

Complainant's testimony.

87 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

[SEAL.] The President of the United States of America to Henry C. Butler, esq., Rochester, Minn., greeting:

Know ye, that in confidence of your prudence and fidelity you have

been appointed, and by these presents you, or any one or more of you, are invested with full power and authority to examine Charles C. Willson, of the same place, on his corporal oath, as a witness in a cause depending in the circuit court of the United States for the eastern district of Wisconsin, wherein Adoniram J. Wright, assignee of the estate of Neils Peterson, a bankrupt, is plaintiff, and John A. Dutcher, Edward H. Ball, & John R. Goodrich are defendants, the testimony to be used by either party upon the interrogatories annexed to this commission, and therefore you are hereby commanded that you, or any one or more of you, at certain days and places to be appointed by you for that purpose, do cause the said Charles C. Willson to come before you, and then and there examine him on oath upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seals of any one or more of you, into the said circuit court of the United States, before the judge thereof, with all convenient speed.

Witness the honorable Nathan Clifford, first associate justice of the Supreme Court of the United States of America, at the city of Milwaukee, in said district, this nineteenth day of July, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the 98th.

EDWARD KURTZ, *Clerk.*

88 *Rules.*

On the receipt of the commission, made out as aforesaid, by any one of the commissioners named, he shall give notice to the other commissioners named therein of the time and place of taking the depositions, if possible, and if any of the commissioners are absent at the execution of said commission, any one or more present may proceed to execute the same (unless otherwise expressly directed therein) as if all were present; but they must certify that those absent have been duly served with notice of the time and place of executing said commission, or the reasons for their not being so notified.

The persons to whom such commission shall be directed, or any one or more of them, unless otherwise expressly directed therein, shall execute the same, as follows:

First. They, or any of them, shall publicly administer an oath to the witnesses named in the commission, that the answers given by such witnesses to the interrogatories proposed to them shall be the truth, the whole truth, and nothing but the truth.

Second. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him, and certified by such of the commissioners as are present at the taking of the same.

Third. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate, and shall in like manner be subscribed by the witness proving the same. (This section must be understood to refer to such papers as can be produced upon the examination.) If the paper referred to be a record not subject to the control of the party or the commissioners, it will be sufficient to annex a copy, and the original may be produced on the trial separate from the commission.

Fourth. The commissioner, or commissioners, shall subscribe each sheet of the depositions, and annex all the depositions and exhibits to the commissions, upon which the return shall be endorsed, and shall close them up under their or his seals, and shall address the same when

so closed to the clerk of the court from which the commission issued, at his place of residence, with the style of the suit.

Fifth. If there is or is not a direction on the commission to return the same by mail, they or he shall immediately deposit the packet so directed in the nearest post-office.

Sixth. If there be a direction on the commission to return the same by an agent of the party, who sued out the same, the packet so directed shall be delivered to said agent.

89 United States circuit court, eastern district of Wisconsin.

ADONIRAM J. WRIGHT, ASSIGNEE OF THE ESTATE of Neils Peterson, bankrupt,
vs.
JOHN A. DUTCHER, EDWARD H. BALL, & JOHN R. Goodrich.

Interrogatories to be administered to Charles C. Willson, of Rochester, in the State of Minnesota, a witness to be produced, sworn, & examined under and by virtue of the annexed commission, before Henry C. Butler, esquire, of the same place, the commissioner therein named in the above-entitled cause and court, said testimony to be used by either party pursuant to stipulation filed in the said cause.

First interrogatory. What is your name, age, and occupation, & where do you reside, & how long have you resided in your present place of abode?

Second interrogatory. Do you know the parties hereto, (above named,) or either of them, and how long have you known them—or which of them?

Third interrogatory. Did you, as the atty. or agent of said defts., Messrs. Dutcher, Ball & Goodrich, on or about the 8th day of December, 1869, at Rochester, in the State of Minnesota, receive from any
90 & what source any notes, accounts, credits, judgments, & evidences of indebtedness, under seal or otherwise, to hold and collect as collateral security for any & what indebtedness to said Dutcher, Ball & Goodrich? State fully.

Fourth interrogatory. Having stated, in answer to the last interrogatory, that you did receive certain or any property of the nature & kind therein indicated at the time stated, & for the purpose of collateral security, &c., you will now state fully and at large the specific items of each of said securities, whether resting in account or otherwise, giving dates, amounts, & a full & perfect description thereof; the names & residences of the debtors, the time on which all & each of said securities other than the accounts were given, the rate of interest they were drawing, and if in any way secured by endorsement, guaranty, or otherwise; fully describe said securities; give the name & residence of any person so being security, & the place of record, date & specific description of every written security given to secure any of said indebtedness to said Peterson, & so placed in your hands with the said collaterals; attach a schedule to this your answer containing above descriptions, with a separate statement as to each kind of security then placed in your hands for the purposes aforesaid, so that the same may present a full & true statement of the exact condition of each of said securities at the time you so received them.

91 Fifth interrogatory. State if you have surrendered any of said

securities and taken any others in their place, or for any portion thereof. If so, state fully when received, giving the amounts & dates of said new securities, the terms thereof, names & residences of the parties liable thereon as makers, endorsers, or otherwise; & if secured by mortgage or otherwise, describe said mortgages & other securities; attach schedule of said new securities, & state the reasons of taking the same.

Sixth interrogatory. State what & each & every security, mortgage, obligation, note, evidence of debt, contract, claim, demand, account, credit, & chose in action or judgment you now hold or control, which was so as aforesaid delivered to you on or about the 8th day of December, 1869, as collateral security, or has since been in any way received by or for you, or is held subject to your control, or which rests in any contract, security, or judgment growing out of any of the same. Describe them as fully as hereinbefore required in the preceding interrogatories, stating when received, & attach schedule.

Seventh interrogatory. Specifically state what has become of each of the securities in these interrogatories hereinbefore referred to which you do not now hold or control, & where they now are, & who holds
92 the same. If paid, describe & state fully when & by whom paid, & to whom, & how much was paid on each one of said securities; and if any were compromised, on what terms, stating which, & when compromised.

Eighth interrogatory. State fully & in gross how much has been paid on each of the various securities referred to in the sixth interrogatory; when were each of said amounts paid; by whom & to whom? State specifically, without any deduction for expenses & commissions, actual or contingent.

Ninth interrogatory. Were any of the securities held by you in any of the ways hereinbefore specified surrendered to said Peterson, or said Dutcher, Ball & Goodrich; if so, which, & when, & why?

Tenth interrogatory. Did you ever receive anything but money in payment of any of these securities; turn them on your own private account, or otherwise? If so, what did you receive; how did you turn them on private account, & to what amount; & where was it this was done, & upon whose & what indebtedness?

Eleventh interrogatory. Please give here a detailed statement of every cent by or for you collected on any and all of the various securities & debts in these interrogatories already referred to, giving the exact
93 sum collected on each security, debt, or account; specifying each separately, and the date of said collection.

Twelfth interrogatory. State in detail what was done by you with said moneys, & where they now are. Did you keep a separate account & deposit thereof, or did you mix them with your own funds?

Thirteenth. Did you loan any of said monies either separately or with your own funds? If you did loan them what securities did you take, & when did you loan any & each sum you did loan? State fully, also, at what rate of interest & to whom you made the respective loans.

Fourteenth interrogatory. Have you on hand, or within your control or knowledge, any of the securities for which you so loaned said money; if so, please describe the same fully as to amount, date, time of payment, interest, & where the same now are. Do this in detail & fully, & to whom were said securities made payable & by whom were they given?

Fifteenth interrogatory. Have you, & how often, loaned any of said moneys or their payment after the first loan by you? If so, when; for

what amount, to whom, at what time & rate, & on what security & to whom payable? State fully & in detail where are & who holds said new securities.

94 Sixteenth interrogatory. On any of these loans did you ask, accept, or receive anything more for the use thereof than was expressed on the face of the various securities taken by you? If so, how much, & on which of said loans, & when, & of whom? State fully & in detail.

Seventeenth interrogatory. Have you made any charges to the various persons or any of them, procuring said loans for your services in getting them this money? If so, how much money did you receive of each, & when did you receive it, & from whom, & what services did you render each of them? What did you do to get them said loans & secure the same?

Eighteenth interrogatory. Have you in any, and what, manner made use of any of the collections from any of the securities in any of these interrogatories hereinbefore referred to, in any other way than by way of loan, either for your own private investment or otherwise?

Nineteenth interrogatory. State what, if any, investments you have made with any of said moneys; what, if any, profits have been realized therefrom; and have you now in your possession or under your control any property whatever the result of any of said investments? If so, describe it. When were said investments made, and how much

95 of said money was appropriated to each of said investments?

Twentieth interrogatory. State how much money you have realized or received from all collections made from any & all of the securities hereinbefore referred to, including interest thereon, & receipts for loans, charges for procuring the same, interest on reinvestments, & from every other source whatever, resulting from the said original collaterals being left with you for collection.

Twenty-first interrogatory. How much of said moneys have you sent to Dutcher, Ball, and Goodrich, & when did you send it & how did you send it?

E. MARINER,
Complts.' Solr.

96 UNITED STATES OF AMERICA,
Eastern District Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America, for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom now on file, and remaining of record in my office.

In testimony whereof I have hereunto set my hand, and duly affixed the seal of the said court at the city of Milwaukee, in said district, this 19th day of July, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the said United States the ninety-eighth.

[SEAL.] EDWARD KURTZ, *Clerk.*

97 UNITED STATES OF AMERICA,
District of Minnesota, ss:

Be it remembered that on this nineteenth day of August, in the year of our Lord one thousand eight hundred and seventy-three, I, Henry C. Butler, of Rochester, in the State of Minnesota, a commissioner duly ap-

pointed by the circuit court of the United States for the eastern district of Wisconsin, did call and cause to be and personally appear before me, at my office in the city of Rochester, in the State of Minnesota, Charles C. Wilson, to testify and the truth to say, the testimony to be used by either party in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the eastern district of Wisconsin, wherein Adoniram J. Wright, assignee of the estate of Neils Peterson, a bankrupt, is plaintiff, and John A. Dutcher, Edward H. Ball, and John R. Goodrich are defendants.

And the said CHARLES C. WILLSON being about the age of forty-three years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the answers given by him to the interrogatories annexed to the commission
98 herein, and in the matter of controversy aforesaid, I did carefully examine the said Charles C. Willson, and he did thereupon, in answer to said interrogatories and each of them, depose, testify, and say as follows:

To the first interrogatory. My name is Charles C. Willson; my age is forty-three years; my occupation is attorney at law, and I reside in the city of Rochester, Minnesota, and have so resided for fifteen years last past.

To the second interrogatory. I know the plaintiff, Adoniram J. Wright, and have known him six or eight years. I know John R. Goodrich; I saw him several times in the years 1868, 1869, and 1870, and have not seen him since. That is all my knowledge of him. The other parties I do not know.

To the third interrogatory. As attorney agreed upon between the parties I received from John R. Goodrich, one of the defendants, and Neils Peterson, notes, accounts, and a mortgage to hold and collect
99 as collateral security to the indebtedness of said Peterson to the firm of Dutcher, Ball & Goodrich; I received them December 8th, 1869, at Rochester, Minnesota.

To the fourth interrogatory. Hereto attached, marked "Exhibit A," is a copy of the schedule of such notes, accounts, and mortgage, made at the time I so received them, and made by me, showing the name of the debtor, the amount of the debt, and the dates of the several notes. I cannot now recollect or furnish a more complete statement of such demands, or state the residences of most of the makers, or the rate of interest the notes bore, or the time when they were to fall due.

Most of the notes were defectively drawn as to the rate of interest, and in legal effect bore but seven per centum per annum after maturity. Two or three of the notes were signed by two joint makers, one of whom I supposed to be surety for the other. One of the notes was secured by the mortgage before mentioned. These are the only securities to any of the debts. At least I now recollect of no other. I do not know which of the parties principal or which security. I do not know where
100 such sureties resided. The debtors mainly resided in the counties of Olmsted, Mower, and Dodge, in the State of Minnesota. The mortgage was recorded in the office of the register of deeds of Olmsted County, in book W, pages 48 & 49. Prefixed to the schedule is a copy of the agreement transferring the notes, accounts and mortgage to Dutcher, Ball & Goodrich, and under which I received them for collection.

To the fifth interrogatory. I have surrendered to Niels Peterson on the 21st day of December, 1869, the account against John and Edward Fitzgerald for $232.70 and the note of Edward Fitzgerald for 90\frac{60}{100}$,

and received therefor a note and chattel mortgage for $500.00, made by John & Edward Fitzgerald, which note & mortgage I subsequently delivered to the plaintiff in this case after his appointment as assignee in bankruptcy of said Peterson. On the day of January, 1870, I surrendered to Neils Peterson the note made by Ole Olson for $54.73, dated November 23, 1869, and he sold it to a man by name of Pearsall for $50.00 to get money to pay a demand of H. J. Cepperly & Co. against him. I surrendered to Neils Peterson a few days after December
101 8, 1869, the note of Syaer O. Haugen, for 26.25, dated June 18, 1869, to send to his attorney in Mower County, where, as he said, a suit had been commenced on this note before he transferred it. I have never heard anything regarding it since. I surrendered to Peterson, I think, December 18, 1869, two notes of Neils Tenson and surety, both dated May 15, 1869, one for $75.08 and the other for $50.00, and he put them in the hands of Chas. H. Chadbourn for collection, who held other claims against the makers, and belonging to Peterson. Chadbourn brought suit on all the claims in Peterson's name, and paid to me $81.00 January 17, 1870, as the nett proceeds realized on those two notes. Many of the claims were doubtful, and where it was practicable I endeavored to, and frequently did, obtain security of some kind and give further time. It is impossible for me to give a history now of the various transactions. Attached hereto is a schedule, marked "Exhibit B," of each and all the claims so received by me, and numbered from 1 to 47, inclusive, with memoranda attached referring by the numbers to each, and stating the history of the proceedings for its collection.
102 To it I refer for a more detailed and complete answer to this interrogatory.

To the sixth interrogatory. I hold evidence of title in the name of John R. Goodrich to sixty acres of land, and have six judgments, two notes, and one mortgage and note, a statement of each and all of which is given in full in Exhibit B and the memoranda attached to it, before mentioned. To it I refer for a more complete answer to this interrogatory.

To the seventh interrogatory. The other securities not now held by me and not surrendered as before mentioned, have been paid or other disposition made thereof as shown by said Exhibit B and the memoranda to it attached; said exhibit shows the gross amount paid on each, including all interest and costs and disbursements, the time when paid, the disbursements under each claim, and the charges for its collection. To that exhibit I refer for a more complete answer to said interrogatory.

To the eighth interrogatory. The total amount of money re-
103 ceived on all the claims to this date for principal, interest, taxed costs, attorney's fees, and dibursements is $2,223.34. Of that sum $325.70 is disbursements paid out, and $491.50 are attorney's fees, costs, and charges for my services in the entire matter to this date. Exhibit B, above mentioned and hereto attached, shows the several times when each of the items making up the above amounts were paid, the amount paid on each of the claims, the amount of disbursements on each claim separately, and the costs and charges by me made on each of the several claims. To it and the memoranda to it attached I refer for a more complete answer to this interrogatory.

To the ninth interrogatory. For an answer to this interrogatory I refer to my answer to the fifth interrogatory.

To the tenth interrogatory. I state that I never received anything but money in payment of the above-mentioned securities; I have never turned any of them on my own private account; I have sometimes bid

in property in the name of John R. Goodrich at judicial sales in
104 the progress of collections, but have only done so for the purpose of saving the debt for the want of other bidders, and have never speculated in or profited by any such purchases in any way. I hold a power of attorney from him enabling me to so do.

To the eleventh interrogatory. In answer to the eleventh interrogatory I state that Exhibit B, before mentioned, contains a detailed statement of every cent by or for me collected on any and all of the various securities and debts in the interrogatories referred to, and gives the exact sum collected on each, and the date of such collection, to which exhibit and the memoranda thereto attached I refer for a complete answer to this interrogatory.

To the twelfth interrogatory. On the 18th day of November, 1870, I remitted to Dutcher, Ball & Goodrich, at Milwaukee, by draft, $200.00. They owed me an account of $25.00 for services as attorney in other matters. I also charged them $100.00 for services in this matter, and on August 19, 1873, I sent them draft for $1,081.14, less exchange, being the balance collected. I did not keep a separate account or
105 deposite of these funds; I keep but one deposit-account at bank and all transactions appear therein.

To the thirteenth interrogatory: I did not.

To the fourteenth interrogatory: I have not. I loaned none of said money.

To the fifteenth interrogatory: I have loaned none of said moneys.

To the sixteenth interrogatory: I never made any loans nor received any bonus.

To the seventeenth interrogatory: I have not.

To the eighteenth interrogatory: I have deposited the moneys in bank not always on the day or in the sums as paid in. My general bank-account has not always shown a balance in my favor equal to the amount of money on hand in this matter, but my check for any such balance would have been paid at any time. I have not otherwise made use of any of said money.

106 To the nineteenth interrogatory: I have made no investments with said moneys. I have realized no profits therefrom. I have no property under my control whatever, the result of any such investment.

To the twentieth interrogatory: The total amount of money collected on the securities left as collateral, up to and including this date, is $1,847.64; attorney's fees collected, $50.00; disbursements paid out and collected back of debtors, $325.70. My charges and commissions in this business have been the said $50.00 attorney's fees, and $441.50 additional. This includes interest and everything received from every source relating to said collaterals.

To the twenty-first interrogatory: I have sent $1,281.14, and credited them $125.00 to balance their account with me at the times and manner stated in my answer to the twelfth interrogatory.

Dated Aug't 19th, 1873.

CHAS. C. WILLSON.

I, Henry C. Butler, the commissioner named in the annexed commission, do hereby certify that on the nineteenth day of August,
107 A. D. 1873, Charles C. Willson, the witness named therein, personally appeared before me, at my office in the city of Rochester, in the State of Minnesota, and after having been by me sworn to testify the truth, the whole truth, and nothing but the truth in the answers

given by him to the interrogatories proposed to him, I reduced the examination of said witnesss to writing in his presence and from his statement; and after carefully reading the same to said witness he subscribed the same, and the exhibits annexed hereto, in my presence.

HENRY C. BUTLER,
Commissioner.

EXHIBIT A.—*Henry C. Butler, comr.*

I have this day assigned and delivered to Messrs. Dutcher, Ball & Goodrich notes and accounts against my customers, of which lists are hereto attached; and the same are placed in the hands of Chas. C. Willson, for collection, as collateral security to my indebtedness to them. After he has collected or secured a sufficient amount thereof to pay my indebtedness to them, and expenses of collection & securing the same, the balance of the note and accounts are to be returned to me
108 for value received.

Dated Dec. 8th, 1869.

N. PETERSON.

[5-cent stamp, cancelled.]

Accounts.

515.	Christopher Hope	$26 11
480.	Jno. & Edwd. Fitzgerald	232 70
477.	James Campbell	25 80
476.	Patrick Fogerty	184 87
213.	Seivert Nelson	54 23
195.	Evan Amundson	60 72
183.	Peter Mundel	42 68
163.	Edward Alvard	52 28
152.	Halder Halderson	$58 89
135.	Wm. Hines	44 38
125.	Michael McCanna	49 81
93.	J. P. Adamson	63 21
61.	Ole Torgeson	51 95
53.	Andrew Olsen	64 43
31.	John Mahon	31 16
11.	Michael Olsen	18 80
10.	P. Dougherty	
4.	Thos. Kavner	

Patrick Fogerty	6-16-'69		$77 10
Do.	9-15-'68		50
Chas. Kruger	12-22-'68		18
Leonard Prior	5-20-'69		16 56
109 Do	11-6 -'69		17 70
Halder Halderson	6-15-'69		38 37
Carl A. Quale	9-30-'69		28 50
Bernard McLaughlin	6-29-'67		25 36
Ole N. Oleson	6-30-'69		38 85
Andrew Johnson	7-6 -'69		55 68
Chas. H. Blackwood	8-6 -'69		66 56
Albert Fisher	12-12-'68		40
Iver Nelson	12-4 -'69		36 42
H. H. Quille	6-22-'69		19 80

Ole Olson	11-23-'69	54	73
Ole Fraaguat	11-29-'69	34	77
Peter McKone	11-26-'69	57	65
Arne T. Boni	11-25-'69	32	20
Henrick Monson	6-2 -'69	19	70
Jens Anderson & surety	11-1 -'69	16	20
Syaer O. Hangen	6-18-'69	26	25
Michael Olson	10-22-'69	15	90
David Honeywell	11-26-'69	21	13
Michael McCanna	6-2 -'69	93	92
Do	11-13-'68	60	
Edw'd Fitzgerald	5-20-'69	98	80
Peter Meney	7-15-'69	79	50
Do	12-2 -'69	119	19
Jno. C. Buckley	11-13-'69	37	
H. C. Stage	9-10-'69	73	87
R. C. Adams	12-1 -'69	135	55
Do	7-7 -'69	55	
110 Even Torkeldson	6-28-'69	44	85
Do	11-29-'69	78	33
Geo. Hansen	12-3 -'69	128	27
Niels Tenson & surety	5-15-'69	75	08
Do	5-15-'69	50	
Jas. P. Adamson & surety	12-28-'68	92	94
John Rooney & mortg	8-4 -'69	153	50
J. P. Adamson	1-10-'68	23	50
George Hansen	12-11-'68	13	25
P. M. Tolbert	12-5 -'69	25	00

Copy. Attest:

CHAS. C. WILLSON.

EXHIBIT B.—*Henry C. Butler, Com'r.*

	Name of debtor.	Am't of Peterson's claim.	Disbursements paid out.	Charges.	Amounts collected.	When collected.	Date of judgment.	Am't of judgment unpaid.
1.	Christopher Hope	$26 11	$7 10	$10	.....	.....	Ap. 5, '72	$38 10
2.	Jno. & Edw'd Fitzgerald	232 70	1 32	25	.....	.....	.....	.....
x.	Edw'd Fitzgerald	90 80	.....	.....	.....	.....	.....	.....
3.	Jas. Campbell	25 80	3 20	5	$31 60	Oct. 27, '70	.....	.....
4.	Patrick Fogerty	184 87	.....	.....	.....	.....	.....	.....
	Do	77 10	36 70	50 00	.....	.....	M'ch 16, '70	347 63
	Do	50 00	.....	.....	.....	.....	.....	.....
5.	Seivert Nelson	54 23	.....	.....	.....	.....	.....	.....
6.	Evan Amundson	60 72	3 50	10	66 54	June 18, '70	.....	.....
7.	Peter Mundel	42 68	.....	3	45 00	June 17, '70	.....	.....
	8. Edw'd Alvord	52 28	6 25	10	62	May 31, '70	.....	.....
111	9. Halder Halderson	58 89	.....	10	58 21	.....	.....	.....
	Do	38 37	.....	.....	9 44	Dec. 14, '69	.....	.....
10.	Wm. Hinds	44 39	43 20	40	66 71	Nov. 11, '71	60 acres land	$100
11.	Michael McCanna	49 81	.....	.....	.....	.....	.....	.....
	Do	93 92	33 00	50	311	Dec. 16, '71	.....	.....
	Do	60 00	.....	.....	.....	.....	.....	.....
12.	Jas. P. Adamson	63 21	.....	.....	.....	.....	.....	.....
	Do	23 50	26 75	35 00	256 95	Feb. 4, '73	.....	.....
	Do	92 94	.....	.....	.....	.....	.....	.....
13.	Ole Torgeson	51 95	.....	.....	.....	.....	.....	.....
14.	Andrew Olson	64 43	.....	.....	.....	.....	.....	.....
15.	John Mahon	31 16	.....	.....	.....	.....	.....	.....
16.	Michael Olson	18 80	.....	.....	.....	.....	.....	.....
17.	P. Dougherty	.....	.....	.....	.....	.....	.....	.....
18.	Thos. Kavner	.....	.....	.....	.....	.....	.....	.....
19.	Chas. Kruger	18 00	4 80	5	26 94	Nov. 30, '70	.....	.....
20.	Leonard Prior	16 56	3 80	5	40	Nov. 1, '70	.....	.....
	Do	17 70	.....	.....	.....	.....	.....	.....
21.	Carl A. Quale	28 50	6 10	5	.....	.....	Nov. 4, '70	$35 65
22.	B. McLaughlin	25 36	.....	5 00	40	Dec. 24, '72	.....	.....
23.	Ole N. Olsen	38 85	5 85	5	.....	.....	Nov. 4, '70	49 75
24.	Andrew Johnson	55 68	9 90	10	74 70	Oct. 1, '70	.....	.....
25.	Chas. H. Blackwood	66 56	14 32	10	.....	.....	May 20, '70	85 81
26.	Albert Fisher	40	4 40	5	54 12	Oct. 31, '70	.....	.....
27.	Iver Nelson	36 42	.....	5	37 20	Feb. 17, '70	.....	.....
28.	H. H. Quille	19 80	3 20	5	26 36	Nov. 3, '70	.....	.....
29.	Ole Olson	54 73	.....	.....	.....	.....	.....	.....
	30. Ole Fraaguat	34 77	.....	.....	36 90	June 3, '70	.....	.....
112	31. Peter McKone	57 65	4 22	10	68 35	Nov. 1, '71	.....	.....
	32. Arne T. Boni	32 20	3 85	5	22 25	Nov. 2, '70	.....	.....
33.	H. Mouson	19 70	.....	5	22 50	Aug. 2, '70	.....	.....
34.	Jens Anderson & al	16 20	3 35	5 00	20 89	Oct. 25, '70	.....	.....
35.	Syaer O. Haagen	26 25	.....	.....	.....	.....	.....	.....
36.	Michael Olson	15 90	.....	2 00	.....	.....	.....	.....
37.	David Honeywell	21 33	.....	5	23 10	Aug. 1, '70	.....	.....
38.	Peter Meney	79 50	30 40	50	.....	.....	Aug. 1, '73	308 41
	Do	119 19	.....	.....	.....	.....	.....	.....
39.	Jno. C. Buckley	37	3 30	5 00	41 10	July 25, '70	.....	.....
40.	H. C. Stage	73 87	12 75	10 00	91 20	Feb. 22, '70	.....	.....
41.	R. C. Adams	135 55	8 68	20	217 95	Nov. 18, '70	.....	.....
	Do	55 00	.....	.....	.....	.....	.....	.....
42.	Even Torkeldson	44 85	24 45	25	160 93	Sept. 16, '70	.....	.....
	Do	78 33	.....	.....	.....	.....	.....	.....
43.	Geo. Hansen	128 27	18 25	25	170 25	June 19, '71	.....	.....
44.	Neils Tenson & al	75 08	.....	.....	81 08	Jan'y 17, '71	.....	.....
	Do	50	.....	.....	.....	.....	.....	.....
45.	John Rooney	153 50	3	10	15 35	Aug. 4, '70	Mortgage	$153 50 & int.
46.	Geo. Hansen	13 25	.....	1 50	16 52	Dec. 11, '69	.....	.....
47.	P. M. Tolbert	25	.....	5 00	28 20	Fall of 1871	.....	.....

Memoranda of my doings in the matter of the claims assigned by N. Peterson to Dutcher, Ball & Goodrich on Dec. 8th, 1869, & placed in my hands for collection by the parties.

113 1st. Christopher Hope, a/c $26.11; sued deft. June, 1871. Cause settled July 7th, for deft.'s note, with Phillip Hope, jr., as surety

for debt, $26.11; int., $3.13; costs, $1.00. New note not being paid, on March 23d, 1872, sued both makers before L. L. Eaton, j. p., & on April 5th, 1872, obtained judg't; dam., $33; costs, $5.10. On Mch. 3d, 1873, transcript of the judgment was docketed in district court, Olmstead County; fees, $1.00. Total costs paid out by me, $7.10. Nothing collected. My charges, $10.00.

2nd. Jno. & Edw'd Fitzgerald, jr., a/c $232.70 and Edward Fitzgerald' nofe 5, 20, '69, $90.80. On Dec. 21st, 1869, took Jno. & Edward Fitzgerald's note for $500 secured by chattle mortgage on threshing-machine & grain, &c. The a/c & note then amounted to $331.85, & defts. were trading with & owing Peterson other claims, & so made this note for $500. Made two copies of the chattle mortgage; filed one in Racine, Mower Co., & the other in the town of Rochester; each stamped 50 cts. As there was a joint interest with Peterson's assignee in bqcy. in this security, I turned the whole mortgage into his hands to be looked after & collected. I got security & the claim into good shape, for which I charged $25.00. The defts. were worthless.

114 3rd. James Campbell, a/c $25.80. I took deft.'s note Jany. 5, 1870, for $25.85; on October 19th, 1870, I brought suit on the note before L. L. Eaton, justice of the peace. Paid Sheriff Brown for serving summons $2.70, & j. p. fees, 50 cts. Oct. 27th, 1870, rec'd $31.60 in full of the demand—the note, $25.85; interest, $2.58; sheriff, $2.70; justice of the peace, 50 cts. My charges for this collection & suit, $5.00.

4th. Patrick Fogerty, account $184.87, and note, June 16th, 1869, $77.10, & note September 15th, 1868, $50. I brought suit in district court on all these claims Feb. 17th, 1870, & obtained judgment Mch. 16th, 1870, for damages, $333.08, & costs $14.55, & issued execution, which was returned unsatisfied. On April 24th, 1872, I got out 2nd execution, & sheriff levied on defendant's crops on the ground. Daniel Ryan made claim to the growing grain, & several affidavits, & W. D. Hurlbut made claim to it and served affidavits & demands. I indemnified the sheriff, & he advertised and sold the grain to me, for plaintiffs, for the small sum of $85. Paid sheriff' fees on this execution $7.75, & paid Swartswood for watching the grain $16.50; could get no one

115 to thresh the grain for fear of being sued. Finally deft. & Hurlbut & Ryan united, threshed the grain secretly, & stole it all away before I learned of their doings. They have all (except Ryan) been enemies of mine ever since. For executions I paid $2.90. The 3rd execution was issued March 23rd, 1872. Total money paid out by me in this case, $36.70. Collected nothing yet. My charges in this case, $50.00.

5th. Seivert Nelson, account $54.23; have never done anything in this. Paid out no money; have no charge. The reason nothing was done was:

6th. E. Amundson, account $60.72; settled with him Dec., 18th, 1869, & took his note for $59.53, with interest. On May 31st, 1870, I brought suit in district court on the note, & on June 18th, 1870, he paid up in full of note, interest, and costs, $66.50; viz: note, $59.53; interest, $3.56; sheriff' and clerk' fees, $3.50.

7th. Peter Mundell, account $42.68. On the 29th Dec., 1870, obtained debtor's note for the amount, $42.68, which note was on June

116 17th, 1870, paid, with interest, 12 %, $45.00. No disbursements. My charge, $3.00.

8th. Edward Alvord, account $52.28. On the 10th Dec., 1869, I brought suit in the district court on this account, as deft. refused to pay it. After the papers were made and served, deft. came in and gave his note

for the claim & disbursements, $6.25; total $58.53. Afterwards, on May 31st, 1870, he paid the note, $62.00; disbursements, $6.25; my charges, $10.

9th. Halder Halderson, account $58.89, and note, June 15th, 1869, for $38.37. Deft. gave his note on the 14th Dec., 1869, for $58.21, in full of the account, and at the same time paid cash $9.44, in full of the note. He had paid Peterson the balance of the old note. The new note he paid soon. My charges & for costs & disbursements in this matter, $10.00.

10th. William Hinds, account $44.38. He was also surety on a note of J. P. Adamson for $92.94. Suit was commenced on both account and note Feb'y 17th, 1870, and on March 16, 1870, judgment was obtained for damages, $151.75, and costs, $14.15. March 21st execution was issued, & afterwards returned wholly unsatisfied; 2nd execution
117 was issued, and real estate levied upon, advertised, and sold November 7th, 1870, to Jno. R. Goodrich, as follows:

N. W. ¼ sec. 32. T. 105, R. 15, sold for $50; N. 60 a. of E. ½, N. E. ¼ 2, T. 106, R. 15, sold for $140; W. ½ N. W. ¼ of N. E. ¼ of S. E. ¼ 4, T. 107, R. 15, sold for $12.35—total $202.35; costs & disbursements in the judgt. $14.15; 2nd execution, $1.00; printer's fees, $8.55; register, $4; stamp, 50 cts.; sheriff's fees on the execution, $15.00—total, $13.20. Damages in the judgment, $151.75; interest, $7.40—$159.15. These disbursements, damages, and interest make $202.35, the amount of Jno. R. Goodrich' bid.

Nov. 7th, 1871, rec'd of sheriff in redemption of N. W. ¼ sec. 32, T. 105, R. 15, $53.50, & on Nov. 11th, 1871, of Huber Bastian, $13.21 in redemption of the five acres of timber. The 60 acres was never redeemed; deft. claims this 60 acres as his homestead, & threatens to bring suit to set aside the sale.

J. P. Adamson has since paid the note included in this judgment. The $66.71 received for the two redemptions will cover disbursements, & if he will now pay the account, $44.38 & interest, and the balance of attorney fees, I recommend to give him a quit-claim deed of the 60 acres.

Disbursements $43.20; my charges $40.

118 11th. Michael McCanna, account, $49.81, and note June 2d, 1869, $93.92, and note November 13th, 1868, $60.00. These notes and accounts were computed & settled & payments allowed on Dec. 15th, 1869, and $188.75 found due. I obtained that day a 3rd mortgage on deft.'s farm for the debt & $3.50 expenses of stamps, drawing, & recording, making a mortgage for $192.25 to Jno. R. Goodrich. I foreclosed the mortgage, & the land was sold February 20, 1871, to Jno. R. Goodrich for $293.88, and on Dec. 16th, A. D. 1871, deft. redeemed the land by paying $311.00. Expenses included in the mtg., $3.50; printer's fees on sale, $11.40; sheriff, $3; register of deeds, $4; affidavit, 50 cts.; stamp, 50 cts.; abstract, $5.00; atty. fee, $50.00 in the mortgage; interest on the disbursements, $5.10; total, $83. Debt, $188.75; int. 12% 14⅙ months to day of sale, Feb. 20, 1871—$26.74, & interest on the whole, 10 months at 7 per cent. to the time of redemption, $12.57, makes $228.06; debt collected Dec. 16, 1871, without expense to the fund in any wy.

12th. Jas. P. Adamson account, $63.21, & note Jany. 10th, 1868, $23.50, & note Dec. 28, 1868, $92.94, on which Wm. Hinds was
119 surety.

On Feb. 17th, 1870, I brought suit against Adamson in the

district court, and on March 16th, 1870, obtained judgment by default for damages $201.15, & costs $14.75.

Issued execution March 21, 1870, and sheriff levied on deft.'s growing crops; Augt., 1870, settled the levy by taking of deft. agreement, with Hennesy as surety, for 150 bushels wheat.

Dec. 15th, 1870, received the wheat & sold it for 80 cts. per bushel; paid sheriff's fees on the execution, $7.70, & balance, $112.30, applied on judgment.

Issued 2nd execution April 24th, 1871, & under it sheriff again levied on crops.

Augt. 14th, 1861, I received affidavit of D. Heaney that he owned the crop, & on Nov. 11th, 1871, sheriff returned this execution unsatisfied.

On May 18th, 1872, obtained of defendant chattle mortgage on his crops & other property to secure payment of the balance of the judgment. Judgt., $215.30; int., 1 year, 7%, $15.07; sheriff' fees on execution, $7.70—$238.07. Paid by 150 bushels wheat at 80 cts., $120; leaving balance $118.07; interest, 14 months @ 7%, $9.64, and chattle mortgage, $1.50; stamp, 50 cts.; filing, 10 c., made $130.80, amount due May 18, 1872.

February 4th, 1873, I received of deft. $136.95, in full of the chattle mortgage, & discharged the judgment.

120 Disbursements paid out included taxed costs, $14.15, 2d execution, 90 cts.; sheriff, $1.00; 3rd execution, 90 cts.; sheriff's fees on 1st execution, $7.70; chattle mortgage, $2.10; total, $26.75. My charges, $35.00.

13th. Ole Torgeson's account, $51.95. Have never done anything with this, as I saw no prospect of getting it.

14th. Andrew Olson account, $64.43. Nothing has been collected on this claim.

15th. John Mahon account, $31.16. Nothing has been collected on this claim.

16th. Michael Olson account, $18.00. Nothing has been collected on this claim.

17th. P. Dougherty account. He owed Peterson nothing, as he claims; nothing realized.

18th. Thos. Kavner account. Don't know who this is; have never heard of him; nothing obtained.

19th. Charles Kruger note, Dec. 22, 1868, $18.00. Oct. 21,

121 1870, brought suit on this note in justice's court, before L. L. Eaton, j. p., and on Nov. 4th got judgment for damages, $22.14, & costs, $4.80, and on November 30th, 1870, I received of the justice the $22.14, he retaining the costs. Disbursements, $4.80; my charge, $5.00.

20th. Leonard Prior, note May 20th, 1869, $16.56, & note Nov. 6th, 1869, $17.70. On Feb'y 17th, 1870, settled with deft. & got cash $10, & his note for $26.24 more, & on Oct. 21, 1870, brought suit on the note in justice's court before L. L. Eaton, J. P., and paid Sheriff Brown for serving the summons $3.30; justice fees, 50 cts. On Nov'r 1st, 1870, received $30, & endorsed $26.20 of it on the note & discontinued the suit; balance of the note remains unpaid. Disbursements, $3.80; my charge, $5.00.

21st. Carl A. Quille, note Sept. 30, 1869, $28.50. On the 21st day of October, A. D. 1870, I commenced suit in justice court on this note, and on the 4th Nov'r, 1870, got judgment for damages, $31.25, & costs, $4.40.

On Dec. 1st, 1870, execution was issued & returned unsatisfied,

122 & on Dec. 3d, 1870, judg't was docketed in the district court.

Fees for transcript & docketing in district court, $1.70. Disbursements, $6.10; my charges, $5.00.

22nd. Bernard McLaughlin, note June 29th, 1867, for 25.36; deft. worthless, but on Dec. 24th, 1870, he paid $40 in full of the note.

23rd. Ole N. Olson, note June 30, 1869, $38.85; sued this note Oct. 21, 1870, & got judgment Nov. 4th, 1870, before L. L. Eaton, justice of the peace, for damages, $45.15; costs, $4.60. Dec. 1, 1870, issued execution, which was returned unsatisfied. On March 23rd, 1871, issued 2d execution, which was subsequently returned unsatisfied with $1.25 costs. Nothing has been realized on this judgment in any way.

24th. Andrew Johnson, note July 6, 1869, $55.68. April 13th, 1870, brought suit in the district court on this note. On April 30th, 1870, settled with defendant for new note for $71.15, at 5 months, with T. Danielson surety. Old note, $55.68; interest, $5.57; costs, $9.00—$71.15. The note was paid at maturity, $74.70, Oct. 1st, 1870. Disbursements, $9.90; my charges, $10.

123 25th. Charles H. Blackwood, note Augt. 6th, 1869, $66.56. On Feb. 18, 1870, commenced suit on this note in district court, & on May 24, 1870, got judgment; damages, $72.88; costs, $12.93. On May 25th, 1870, transcript was filed & judgment docketed in Wabasha County, @ 9⅓ a. m. June 4th, 1870, execution was issued to Wabasha County sheriff, & was returned July 11th, 1870, wholly unsatisfied; fees, $1; postage, 39 cts. Disbursements, $14.32; my charges, $10.

26th. Albert Fisher, note Dec. 12, 1868, $40. On Dec. 15th, 1869, I got new note for this old note for $45. On Oct. 19, 1870, I sued deft., & on Oct. 28, 1870, obtained judgment before L. L. Eaton, justice of the peace, for damages, $49.72, & costs, $4.40, and Oct. 31st, 1870, I received of defendant $54.12 in full of the judgment. Disbursements, $4.40; my charge, $5.00.

27th. Iver Nelson, note Dec. 4, 1869, $36.42. On Feb'ry 17, 1870, I got new note of deft. for $37.20, which he subsequently paid in installments in full; my charge, $5.00.

28th. H. H. Quille, note June 22, 1869, $19.80. On Oct. 25,
124 1870, I brought suit on this note; on Nov'r 3rd, 1870, deft. paid up the note $23.16, and paid the costs, $3.20. Disbursements, $3.20; my charge, $5.00.

29th. Ole Olson, note Nov'r 23, 1869, $54.73. Peterson withdrew this note a few days after Dec. 8, 1869, & sold it to F. W. Peasall for $50, to get money to pay H. J. Clepperly & Co.

30th. Ole Fraaguat, note Nov'r 29, 1869, $34.77. Obtained payment of this note June 3rd, 1870. It then amounted to $36.90. My charge, $5.00.

31st. Peter McKone, Nov. 26, 1869, $57.65. On February 18, 1870, brought suit on this note in the district court. On Feb. 22nd, 1870, deft. settled & paid $24 cash, & gave new note, with Thos. McCoy as surety, for balance. Note, $57.65; interest, $1.73; disbursements of the suit, $4.22; total, $63.60. Paid $24, & gave new note for $39.60. On November 1st, 1871, sued the new note before R. H. Gove, justice of the peace, & got $44.35 in full of this note, & deft. paid the disbursments in the justice's court. District court disbursments, $4.22; my charge, $10.

32d. Arnie T. Boni, Nov'r 25, 1869, $32.20. Oct. 25, 1870,
125 brought suit on this note before L. L. Eaton, justice of the peace. Deft. presented receipt for $16; paid to Peterson balance due on the note, 18.40; costs to Sheriff Brown, $3.35; to justice, 50 cts., total costs, $3.85. Deft. paid balance due on the note, and the costs, $22.25, Nov. 2d, 1870. Disbursements, $3.85; my charge, $5.00.

33d. Hendrick Monson, June 2, 1869, $19.70. I collected this note in August, 1870, & got $22.50. My charge, $5.00.

34th. Jens Anderson & Hans O. Thorsness, note November 1, 1869, $16.20. Dec. 18th, 1869, received $5.00 on this note. Oct. 21, 1870, sued the defts. for balance of the note before L. S. Eaton, justice of the peace. On Oct. 25th they came in & paid up note, $12.54, & costs, $3.35, viz: Sheriff Brown, $2.85, & justice, 50 cts. Disbursements, $3.35; my charge, $5.00.

35th. Syaer A. Hangen, note June 18, 1869, $26.25. This note had been sued by Peterson in Mower County before he assigned to Dutcher, Ball & Goodrich, and on learning that fact in January, 1870, they by me delivered the note back to Peterson to send to Mower County to enable him to take judgment. Nothing has been received by me on this matter.

126 36th. Michael Olson, note October 22, 1869, $15.90. On March 23d, 1870, obtained new note for $20; this includes the old note & some account. Nothing has been collected on it. Deft. lives in Mower County. My charge, $2.00.

37th. David Honeywell, note November 26th, 1869, $21.33. Collected this note, after much dunning, Augt. 1, 1870, $23.10. My charge, 5.00.

38th. Peter Meney, note July 15, 1869, $79.50, & note Dec. 2, 1869, $119.19.

On December 21, 1869, obtained new note and mortgage on his farm as security. Old notes, $198.69; interest, $4.14; expenses of mortgage, stamps, & recording, $3.50; total, $206.33. There were prior mortgages on the same land.

On January 6th, 1871, commenced foreclosure of this mortgage, & on February 20, 1871, land was sold for $80 to me in trust for Dutcher, Ball & Goodrich. Note, $206.33; interest, $28.80; total, $235.13. Costs, atty., $50; printers, $11.40; sheriff, $3; register, $4.00; affidavits, 50 cts.; stamp, 50 cts.; abstract, $4.50; total, $73.90.

The prior mortgages were soon after foreclosed & I failed to sell the land subject to such prior mortgages, & the title acquired by this
127 foreclosure was lost. I verbally bargained away the land once to a neighbor for enough to pay this claim, but before writings were drawn he backed out; so atty. fees and $23.90 were lost.

On January 16, 1873, I brought suit on the note, & on August 18, 1873, obtained judgment for damages, $296.91, & costs, $11.50, which there is a fair prospect of now collecting. The total disbursements paid out are $30.40. My charges in this matter, $50.00.

39th. J. C. Buckley, note Nov. 13, 1869, $37.00. Brought suit on this note before L. L. Eaton, justice of the peace, July 12, 1870, and on the 25th July, 1870, deft. paid note & interest, $37.80, & sheriff' & justice' fees, $3.30. Disbursements, $3.30; my charge, $5.00.

40th. H. C. Stage, note Sept. 10, 1869, $73.87. Commenced suit on this claim in the district court Febr'y 17, 1870, & on the 22d Feb'y, 1870, deft. gave mortgage on his farm to secure the debt, $73.87; interest, $4.58; costs in suit, $9.25; mortgage, $1.50; stamp, 50 c.; recording, $1.50; total, $91.20. He afterwards paid the mortgage, but the exact date of payment I cannot now tell, having failed to enter it in my books. Disbursements, $12.75; my charges, $10.

128 41st. R. C. Adams, note Dec. 1, 1869, $135.55, & note July 7, 1869, $55.00.

On December 31st, 1869, obtained mortgage on deft.'s farm to secure these debts. Two notes & interest, after deducting indors'ment, amounted to $188.57; disbursements for mortgage, stamps, abstract, recording, &c

$8.68, making mortgage $197.25. This mortgage he paid November 18th, 1870, with interest, 12%, $217.95. Disbursements, $8.68; my charge, $20.00.

42d. Even Torkeldsen, note June 28, 1869, $44.85, and note Nov'r 29, 1869, $78.33. Brought suit on these notes in the district court, & on May 20, 1870, obtained judgment. Damages, $132.95; costs, $14.75. Issued execution to Sheriff Brown, & he levied on crops on farm of Joel Scott. Deft. is his tenant.

Sept. 16, 1870, received of Scott $160.93 in full of judgment, interest, & sheriff's fees on execution, viz: judgt., $132.95; costs, $14.75; interest, $3.44; sheriff's fees on the execution, $9.79; total, $160.93. Disburs'ments, $24.54; my charges, $25.00.

43d. Geo. Hansen, note Dec. 3, 1869, $128.27. June 7th, 1870,
129 I brought suit on this note in the district court. Deft. employed Tolbert & George, attys., & put in an answer. On January 27th, A. D. 1871, I got judgment for damages, $152.00, & costs, $18.25, & received $100 on the judgment and agreed to wait for the balance, which was paid June 19th, 1871. Disburs'ments, $18.25; my charge, $25.00.

44th. Neils Tenson & surety, note dated May 15, 1869, for $75.08 & note of same date for $50. Dec. 28, 1869, Peterson took these notes & delivered them to C. H. Chadborn, who brought suit on them in name of N. Peterson, & on Jan'y 17, 1870, returned as net proceeds of the notes realized over all costs $81.08.

45th. John Rooney, note & mortgage, August 4, 1869, for $103.50, 10 % interest. August 4, 1870, I received one year's interest on this mortgage, $15.35. I got an abstract of the land, $3.00, & got a prior mortgage to George Baihly paid off & discharged of record, & got the owner of the land, Blakely, who bought of Rooney, to pay up all back taxes to tax of 1873. Disbursements, $3; my charges, $10. This is a first mortgage on forty acres of land & is worth its face.

130 46th. George Hanson, note Dec. 11, 1868, $13.25. This note was paid Dec. 11, 1869, $16.52.

47th. P. M. Tolbert, note Dec. 5, 1869, $25.00. This note I collected in fall of 1871—can't tell the date—by repeated duns. Got it by giving him credit for it on another matter between us, $28.20; my charge, $5.

Copy. Attest:

CHAS. C. WILLSON.

131 UNITED STATES OF AMERICA,
Eastern District of Wisconsin:

United States circuit court.

ADONIRAN J. WRIGHT, ASSIGNEE OF NEILS Peterson, a bankrupt,
vs.
JOHN A. DUTCHER, EDWARD H. BALL, & John R. Goodrich.

Testimony of witnesses produced and sworn before me this twenty-second day of September, 1873, on behalf of the complainant in the above-entitled action, under a stipulation thereto made by D. S. Ordway, esq., of counsel for the complainant, and Chas. C. Willson, esq., of counsel for the defendants.

NEILS PETERSON, a witness on behalf of said complainant, being by me duly sworn to testify the truth, the whole truth, and nothing but

the truth in the answers given by him to the interrogatories and cross-interrogatories to be proposed to him, deposes and says:

My name is Neils Peterson. My age is fifty-two years. My present business is that of clerk in store of Daniels & Steedman, in Rochester, Minnesota; have lived in Rochester, Minnesota, thirteen years.

132 During the years 1867, 1868, 1869, and 1870, to spring of 1870, I was a merchant in general retail trade in Rochester, Minnesota. During those years I purchased goods of Dutcher, Ball and Goodrich, of Milwaukee—groceries. I bought goods of them five or six years before I discontinued business as a merchant. According to my best recollection I bought the last goods of them in September, 1869. I have seen all the members of said firm and know personally John R. Goodrich. I know him well; he usually travelled about the country. I went out of trade in the spring of 1870. I had misfortune and bad luck, and went into bankruptcy in April, 1870. In the winter of 1869 and 1870 Mr. Goodrich was here and I saw him. It was December 8th, 1869. I was at that time in debt to the firm of Dutcher, Ball and Goodrich, of which he was a member.

Question. What was Mr. Goodrich's business with you at the time he was here, December 8th, 1869?

Answer. To settle up our accounts between each other.

Question. How long was Mr. Goodrich here at that time?

Answer. To my recollection, it was two days.

Question. How many times and how long did he talk with you about these accounts at that time?

Answer. I could not tell just how many times, but we had a good many talks before the matter was settled. He came to my store.

133 Question. State what, if anything, Mr. Goodrich wanted you to do.

(Question objected to by defendants' counsel as incompetent, because it should be what was said, and not his inference what was wanted.)

Answer, (subject to objection.) He wanted I should secure him with some notes, and I did so.

Question. Was that security made in writing?

Answer. It was.

Question. Who wrote it?

Answer. Charles C. Willson, the counsel of the defendants, now present.

Question. State as near as you can all that Mr. Goodrich said to you, and you to him, before the security was given.

Answer. Mr. Goodrich said he would not like that his account and note should stand any longer without he got them secured. He would not leave Rochester before he should get it fixed. Then we went over to Chadbourn's bank—there was a note against me there of $700, belonging to this firm of Dutcher, Ball & Goodrich, and also notes I had left there to be collected in Dutcher, Ball & Goodrich's favor—and got the $700 note and the security notes, and then went to the office of said Charles C. Willson. We went into Mr. Willson's office and Mr. Goodrich left the notes I had taken from Chadbourn's bank and my $700

134 note and laid them on Mr. Willson's table. He then said to Mr. Willson that he had a lot of notes there, and he wanted he should take those notes and collect them. There was some other conversation before that. I owed him so much, it was about $1,700 or $1,800, part upon note and part on account, and he said he wanted that Mr. Willson should select those notes and accounts from my ledger—I had my ledger there.

It was about ten or eleven o'clock in the forenoon, and we did not come to any conclusion until about seven or eight o'clock in the evening—after supper-time. I thought he wanted too much security.

(Defendants' counsel objected to taking the last sentence, and moved to strike it out as not responsive to the question and as incompetent.)

I told him that he had too much security, and that I would like to handle my ledger myself; that I owed some other parties. Then he talked to Mr. Willson a little in a back room. He and Mr. Willson came in again, and Mr. Goodrich kind of expressed that he would put me into bankruptcy. He said so. I mean to say that he did say so. I told him that that was what would please me. We talked about everything and talked a little rough. I got a little mad, and about that time we
135 went to supper, both Mr. Goodrich and myself, and after supper we went back to Mr. Willson's office, and we finally settled it up. I gave my own note then for something over $1,700—I think some $1,740—and gave him in cash about $115, and then Mr. Willson selected out notes and accounts amounting, I believe, to some $3,200 and a little over.

(The witness was here shown the original assignment, and compares it with the copy now shown him, which purports to be a copy of Exhibit B, annexed to defendants' answer.)

Question. Were you personally acquainted with all the parties against whom these notes and accounts are?

Answer. I was.

Question. Were any of the parties against whom these notes and accounts were irresponsible or doubtful?

Answer. At the time I gave them up and made the assignment I thought I could have collected them. The following were not very good: Patrick Fogerty, Christopher Hope, John and Edward Fitzgerald, Carl A. Quale, Bernard McLaughlin, Charles H. Blackwood, H. H. Quille, Peter Maney, James P. Adamson.

Question. Were any of those last-named entirely worthless; if so, which?

Answer. None of them were entirely worthless.

136 Question. During your negotiations with Mr. Goodrich, did you tell him at any time what other parties you were then owing; and, if so, what did you tell him?

Answer. I did. I told him I owed James Bonnell, and Bradley, and Metcalf, his next neighbors, and at that moment I did not tell him any more, because I was mad. I had told him my other indebtedness before in that day so far as I knew.

(The last sentence objected to by defendants' counsel as incompetent; should state what the witness said to Goodrich as to other creditors.)

Question. What else did you then tell Mr. Goodrich, if anything?

Answer. I said I did not think I did right in giving him all I had and not giving anything to the other creditors; I said that before I signed the assignment.

Question. Why did you, then, sign it?

Answer. I wanted to pay my debts; so I did so.

Question. Who did you, in the previous part of the day, tell Mr. Goodrich that you owed?

Answer. I could not tell many. I told him I believed that I owed Rindskopf, a Chicago clothing-house; Kellogg, I believe, and they had security. I told him I owed John R. Cook; I owed Chadbourn.
137 I know there were more, but I can't remember any more. I mean that I told Mr. Goodrich more, but I do not now remember who.

Question. Can you tell from your books or otherwise who you was owing, and how much, on the eighth of December, 1869?

Answer. I could tell by my books, I think, but I can't say certainly. You, Mr. Butler, held a note against me; you, Mr. Stait, and Stearns, held some, and Mr. Willson held a small one. I could not remember any more. I do not think there was anything more. I could not tell how much I owed or who to.

(Defendants' counsel moves to strike out all of above answer except the last clause, as not responsive to the question.)

Question. Did you, about the 25 of May, 1869, give to Dutcher, Ball and Goodrich a note of $800 to apply on your indebtedness to them? If so, when was it payable?

Answer. Yes; it was payable in two notes—the first for $400, payable in forty days from date; the other, for $400, payable sixty days from date; both notes dated May 24, 1869.

Question. Were they ever paid?

Answer. They were not. Before the 25 of August, I believe it was,
Mr. Goodrich came to Rochester, and those notes were not paid,
138 and I then paid him $100, and gave him a new note for $700, which he left at Chadbourn's bank.

Question. What was the date of the $700 note?

Answer. August 24, 1869.

Question. How long was that note to run?

Answer. I could not tell.

Question. Why did you not pay the 2 $400 notes when due in full?

Answer. I could not at the time.

Question. Why?

Answer. I had no money.

Question. Did you pay the $700 note when due?

Answer. No, sir; I did not.

Question. Why?

Answer. I had no money.

Question. Did you buy any goods of Kellogg & Co., of Chicago, after the eighth of December, 1869?

Answer. No, sir; I did not, to my recollection. I don't think I did.

(The witness is here shown his original petition and schedules in bankruptcy, and is asked, Is that your original petition and signature? and he answered, Yes, sir; they are.)

Question. Do those schedules of your debts contain a true statement of your debts at the time the petition and schedules were made, on the 5th of April, 1870?

Answer. Yes, sir.

Question. How was your schedule of debts made up; from
139 what sources of information; how did you get at your debts and their amount?

Answer. By books, notes, and bills of purchase, and by my lawyer's assistance.

Question. How much did you owe Kellogg & Co., in round numbers, on the 8th of December, 1869?

Answer. I could not tell. My statement in my schedules in bankruptcy was right, but now I do not recollect the fact independent of the schedules.

Question. Have you here with you your account-book, which shows your account with them?

Answer. Yes.

Question. What is the entry of your account with them on that book?

Answer. Messrs. Charles P. Kellogg & Co. Dr. to mds., per bill August 28, 1860 ..... $1,162 55

Cr. Jan'y 6. To draft $200 00

" 20. Set. by note 1,162 55

Question. Did you make payments on that $965 note from time to time afterwards?

Answer. I believe I did.

Question. On that note was there anything due on the 8th of December, 1869; if so, about how much?

Answer. Yes, sir. I could not tell how much was due.

Question. How much was due on the 5th of April, 1870, on that note?

Answer. I could not tell.

140 Question. When you made your petition in bankruptcy, April 5th, 1870, was that note here in Rochester? If so, who had it?

Answer. Yes. C. C. Willson had it for collection.

Question. Where is that note now?

Answer. I do not know.

Question. Did Mr. Willson ever give it up to you?

Answer. No, sir; he never did.

Question. When was the last payment made on that note?

Answer. I cannot tell.

Question. Is it correctly stated in your schedule of indebtedness?

Answer. Yes, sir.

Question. When is it stated there to have been made?

Answer. December 4th, 1869.

Question. Is the balance due on that note on December 4, 1869, correctly stated upon your schedule of debts?

Answer. Yes, sir.

Question. What is it stated to be?

Answer. $314.82.

Question. Do you remember that you bought anything on credit of them after December 4, 1869?

Answer. I did not.

Question. Did you owe Halsted & Stiles, of New York, on the 5th of April, 1870, $180, as stated on your schedules?

141 Answer. Yes, I did, and I did not become indebted to them for anything after December 8, 1869.

Question. Did you owe the First National Bank of Rochester, Minnesota, as stated in your schedules?

Answer. I did.

Question. Was any of the debt of P. Rindskopf & Bros. incurred after December 8, 1869?

Answer. No.

Question. As to the account of L. L. Eaton & Son, stated in the schedule of debts to have been incurred in the fall of 1869, was it before or after December 8, 1869?

Answer. Before.

Question. Same as to the account of George Head, was it incurred before or after December 8, 1869?

Answer. Before.

Question. Same as to the account of J. Roonsmuller?

Answer. Before December 8, 1869.

Question. Same as to the account of R. H. Doe?

Answer. Before December 8, 1869.

Question. Same as to account of Andrew Nelson?

Answer. Before December 8, 1869.

(It is stipulated that the statements contained in the schedules
142 of indebtedness of Peterson as to the dates when the indebtedness therein mentioned was incurred are correct; and that the copy of the whole petition and schedules thereto attached, which was certified to by O. R. Stearns, former register in bankruptcy, as a correct copy of the original, may be annexed to his deposition and read in evidence by either party.)

Upon cross-examination by Chas. C. Willson, esq., of counsel for the defendants, the witness, Neils Peterson, testified as follows:

I cannot tell whether Mr. Goodrich, when he came here on or about December 8, 1869, had other customers or not here.

Question. Don't you know that he had a like settlement to make with L. L. Eaton & Son, of Rochester?

Answer. I did not.

Question. Did you not voluntarily offer to give Mr. Goodrich securities when he was here December 8, 1869?

Answer. Not before he wanted them.

Question. Did you not tell him that some matters you did not wish to turn out to him for fear of offending your customers?

Answer. I did.

Question. Was Michael McCama good and solvent at the time you turned this account over to Goodrich?

143 Answer. Yes, he was.

Question. You say in your direct examination that I (C. C. Willson) was present when you gave to Mr. Goodrich a statement of your creditors and the debts you owed them. Now, was that reduced to writing there by me?

Answer. I think from my recollection that Mr. Willson took down my statement and reduced it to writing, but what the statement was I cannot now recollect.

(A statement is here exhibited to the witness and he is asked if it is the one then made by Mr. Willson. He says he could not tell. A copy of the statement exhibited to the witness is hereto attached, marked "Exhibit A.")

Question. Did you at the same time give a statement of your assets you had on hand—means to pay with?

Answer. I did as near as I could.

Question. Was that also put in writing by me at the end of the statement of what you owed?

Answer. I could not tell; I do not remember.

Question. You state that the reason you did not pay the 2 $400-notes at maturity was that you had not money. You had means from which you could have raised the money, had you not?

Answer. I had the means in notes and accounts.

144 Question. Had you not also goods from which you could have raised the money by a sacrifice?

Answer. Yes, I had.

Question. What were your usual times of purchasing goods?

Answer. From the 1st to the middle of September, and about April; we usually buy our goods for the fall and spring, but do not usually buy after December 1st.

Question. In regard to the $700 note of Dutcher, Ball & Goodrich, did you have the means when it became due from which you might have raised the money and paid it?

Answer. Not without making sacrifice on notes and goods, and by such sacrifice I could.

Upon his redirect examination the witness testified:

Question. Why did you not make such sacrifice, raise the money, and pay the $700 note at maturity?

Answer. I thought that by waiting a little while I would raise the money and not make the sacrifice.

Question. Why did you not raise the money and pay the two $400 notes at maturity?

Answer. I made an agreement with Mr. Goodrich, & paid him $100 and gave him a new note for $700.

145 Question. Had you other debts that were also due and on which you was being crowded for payment on or before December 8, 1869, besides Dutcher, Ball & Goodrich?

(Defendants' counsel objected to the question on the ground that it is not rebutting evidence and is leading.)

Answer under objection. Yes, I had.

Question. Name one.

Answer. I cannot now. They were not crowding me; lawyers once in a while called on me with collections. Mr. Butler called on me, Messers. Stearns & Start called on me, Baldwin and Benedict had a small collection against me, Baldwin and Benedict had a New York claim, Mr. Butler called with P. Rindskopf's claim. I did not pay P. Rindskopf's note at maturity, because I claimed that it was by mistake given for too much, and when it was afterwards sued, I defended the suit on that ground, but did not succeed. The other note to P. Rindkopf & Bros. I paid promptly.

NEILS PETERSON.

146 EXHIBIT A.—H. C. Butler, Comr.

DEC. 8, 1869.—Statement made by N. Peterson regarding his affairs, which I think is probably correct.

Total indebtedness:

1st National Bank	$1,700 00
Dutcher, Ball and Goodrich; James Bonnell	1,100 00
Brady and Metcalf	800 00
P. Rindskoff & Bro	250 00
Don't owe but $82 in Chicago	80 00
Note in N. Y. for groceries	275 00
Chadbourn & Bro	126 00
	4,331 —

Assetts:

Stock of goods on hand	$6,500
Notes	4,500
a/cs	2,500
House & lots mortgaged	2,000

A true copy.

CHAS. C. WILLSON.

147 ADONIRAN J. WRIGHT, a witness produced and sworn on behalf of the complainants in this action, testified as follows:

I am the plaintiff in this action; am marshal of the city of Rochester; am thirty-nine years of age; have resided in Rochester over ten years. I know Mr. Goodrich, of the firm of Dutcher, Ball & Goodrich, by sight.

Question. Did you see him here in Rochester in the fall of 1869, and have any conversation with him as to Neils Peterson, of whose estate you are assignee in bankruptcy, or his business standing? and, if so, state the whole conversation.

Answer. I did; and had a talk with Mr. Goodrich in fall of 1869. He asked me how I thought Peterson was getting along. I told him I thought all right, as near as I can recollect it. I could not state all the conversation we had there. He said he had claims against Peterson, and he must settle them, or secure them, (I cannot tell which he said,) before he left town. This conversation was on the sidewalk near the store of Bunce, Wright & Cole, and almost in front of Peterson's store. This is nearly all I can recollect of what he said. He then turned and left me and went into Peterson's store. This was early
148 in the morning. I received, I believe, all the goods mentioned in Peterson's schedules as assignee. The stock of goods had been mostly sold by the sheriff on execution. I mean to say by receiving the goods, the portion of them that remained after the sheriff's sale on execution. I received such part of the goods as was left after the execution in sheriff's hands had been satisfied out of them, and I received no others. I sold the most of the goods that came into my hands as assignee at auction, on the 25th of May, 1870, or thereabouts. They were in a bad and moth-eaten condition when I got an order to sell them; the woolen goods were in that condition. It was the remnants of a general stock of dry-goods, boots, and shoes, and crockery.

Question. What did you realize from the entire stock of goods that came into your hands?

(Objected to as irrelevant and incompetent, and the whole stock was not sold at auction, and has no tendency to show the value of Peterson's stock on the 8th day of December, 1869.)

Answer, (subject to objection.) They were sold to Mr. Levy for $396.15. A few boxes and kegs were overlooked at the auction, and were
149 sold at private sale; all the others were sold at auction. I have been a merchant, and have had five or six years' experie'ce as such. I knew the value of goods at the time this sale was made. I considered that I got a fair price for these goods in the condition in which they were in. None of the property mentioned in Schedule B (5) ever came into my hands as assignee. None of the property mentioned in Subsdivisions D, E, F, G, H, and L, in Schedule B (2) ever came into my hands as assignee. All of the property mentioned in Subdivision K, in Schedule B (2) that came into my hands as assignee, I sold at auction, and the proceeds therefrom were included in said sum of 396.15. The notes and accounts mentioned in the schedules came into my hands as assignee.

Question. What efforts did you make as assignee to collect the notes and accounts mentioned in Peterson's schedules that came into your hands?

(Objected to by defendants' counsel as totally irrelevant to any issue in the case.)

Answer. (Subject to objections.) I wrote them all dunning letters, and saw many of them personally, and had the assistance of Mr. Peterson. I did not sue any of them, for the reason that there were false charges on the books of Mr. Peterson against some of them. There was
150 a false charge either against Lawrence or John Doughaty. Some portion of the debtors had moved out of this county. I did not know personally about the solvency of a greater portion of them. I finally sold the notes and accounts on or about November 25, 1872, at auction, by order of the court. The whole amount received by me as as

ignee from the notes and accounts, and judgments that came into my hands, was $1,029,77. The total amount received from all sources by me was $1,425.92. None of the assets remain in my hands; all have been disposed of. The false charges I have mentioned were probably made by mistake, and were afterwards explained by Mr. Peterson.

A. J. WRIGHT.

CHARLES C. WILLSON, a witness produced and sworn on behalf of the defendants in the above-entitled action, testified as follows:

I was present at the time of the interview between Peterson and Mr. Goodrich, December 8, 1869. It occurred in my office in Rochester, Minnesota. I made up a statement of Peterson's assets and lia-
151 bilities from his disclosures there and read it to him. He said it was correct. Goodrich was present. This is the paper I then made there. Exhibit A, mentioned in the deposition of the witness Peterson, is a true copy of it. Nothing was said in my hearing to Peterson regarding bankruptcy in any way. Mr. Peterson and Mr. Goodrich both saw and examined it in my presence and heard it read. It was made to advise Mr. Goodrich what to do.

CHAS. C. WILLSON.

DISTRICT OF MINNESOTA,
County of Olmsted, ss:

I, Henry C. Butler, acting as commissioner to take the depositions of Neils Peterson and Adoniran J. Wright, witnesses for the complainant, and of Charles C. Willson, a witness for the defendant in the action first above entitled, by the stipulation of D. S. Ordway, esq., of counsel for said complainant, and Chas. C. Willson, esq., of counsel for the defendants, hereby certify that each and all of said witnesses appeared before
152 me at my office, in the city of Rochester, in the district and county aforesaid, on the 22d and 23d days of September, 1873, and after being by me sworn to testify the truth, the whole truth, and nothing but the truth, in the suit or matter in controversy now depending and undetermined in the circuit court of the United States for the eastern district of Wisconsin, wherein Adoniran J. Wright, as assignee of Neils Peterson, a bankrupt, is complainant, and John A. Dutcher, Edward H. Ball, and John R. Goodrich are defendants. The aforesaid depositions of each were by me reduced to writing in the presence of said witnesses, and from their statements and in the presence of both of said counsel, and after carefully reading the deposition of the witness who made the same to him, each of said witnesses subscribed to his deposition respectively in my presence and in the presence of both of said counsel.

In testimony whereof I have hereunto set my hand, at the city of Rochester, in the district of Minnesota, this 23d day of September, 1873.

HENRY C. BUTLER,
Commissioner.

153 No. 1.

Circuit court of the United States for the eastern district of Wisconsin.

ADONIRAN J. WRIGHT, ASSIGNEE OF THE ESTATE of Neils Peterson, bankrupt,
vs.
JOHN A. DUTCHER, EDWARD H. BALL, & John R. Goodrich. } In equity.

Deposition of John R. Goodrich, a witness on the part of the defendants, taken by consent, before Edward Kurtz, U. S. commissioner, Milwaukee, Wis., October 22nd, 1873.

Present: M. H. Finch, of counsel for defendants; David S. Ordway, " " complainants.

And the said John R. Goodrich, being duly sworn, deposes and says: I reside in the town of Wauwatosa, and do business in the city of Milwaukee, and I am 45 years old. I am in the wholesale grocery business; of the firm of Ball & Goodrich, of Milwaukee. That firm was the successor to the firm Dutcher, Ball & Goodrich. I know one Neils Peterson, of Rochester, Minnesota. He purchased goods of Du'cher, Ball and Goodrich.

Quest. Does Exhibit A, attached to the answer of the de-
154 fendants in this cause, give the dates of such purchases?

A. It does.

Q. Was said Peterson owing said firm in the month of December, A. D. 1869?

A. He was. The amount was about $1,856.12 *dollars.*

Q. Was that amount due for goods sold to him?

A. It was.

Q. Were you at Rochester, Minnesota, on or about the 8th day of December, 1869, and did you see said Peterson at that place on that day, and did you on that day receive from him any, and what, securities? Give a detailed statement of what took place and was said between you and said Peterson in relation to said securities.

A. I was. I did see said Peterson. I received notes and book-accounts from him, turned out by him as collateral security for the amount due by him to said firm of Dutcher, Ball and Goodrich. The contract and assignment of said Peterson of said accounts and notes is attached to the answer of Dutcher, Ball & Goodrich, and is a correct copy of the same. Mr. Peterson was indebted to us, and had been behind in his payments. It had not been convenient for him to meet his bills, and his payments were behind, and I had known the man for many years; had been a successful merchant. He was a good merchant, but a
155 poor collector, and had large amounts due him. I thought I should realize the money sooner by having these accounts placed with some one that would attend to them, and suggested to him that he turn out a portion of his notes and accounts, and place them in the hands of some one who should collect the same. I asked him if he had any preference as to whom they should be given. We had settled that they should be given to some attorney. Mr. Charles C. Wilson was named, but I cannot tell who named him, but to the best of my recollection Mr. Peterson named him, & after that they were placed in the hands of Mr. Wilson for collection, the expenses of th' collection to be

paid out of the receipts, and the proceeds thereafter to be applied to the payment of our debt, and any surplus to be returned to said Peterson, as by said agreement, copy of which is attached to said answer.

(NOTE.—Plaintiff's counsel admit the said copy marked "B" as evidence.)

Q. Did you at that time take a note from Peterson for the amount of your debt?

A. I did; that is, he paid $115 *dollars*, and gave a note for the balance, which was $1,741.12 *dollars*.

Q. Where did Peterson deliver the securities?

A. In Mr. Wilson's office.

Q. Prior to that delivery of the securities, did he make out a
156 statement showing his assets & liabilities?

A. He did.

Q. Look upon the paper marked "Exhibit A," perporting to be a copy of the statement attached to the deposition of Neils Peterson, & state whether you recognize it as a copy of the original.

A. I should say that it is, to the best of my recollection.

Q. Did you, at or about the date of that statement, and before the securities were delivered, make any enquiries of the National Bank as to its debt of $1,700 *dollars*? If yea, for what purpose did you make such inquiry, and what did you learn?

A. I made the inquiry to satisfy myself as to his solvency. I learned from the assistant cashier that Mr. Peterson considered himself worth from 18 to 20,000 dollars. The assistant cashier said that he thought him worth from 8 to 10,000 dollars after his debts were paid. They had in the bank—he was owing the bank—and they had sufficient collaterals to cover his indebtedness.

Q. Did you understand that he owed the bank more than 1,700 dollars mentioned in the statement?

A. My impressions were that they had received some on the
157 amount; that the amount was less at the time of the enquiry than specified in the statement.

Q. Is the list of the notes and accounts attached to the answer of the defendants a correct list, as you recollect it, of the same turned out to the defendants?

A. To the best of my recollection, it is.

Q. State whether or not at the time you took the same you were furnished with a list by Peterson of his accounts and notes, or a portion of them, and whether Peterson raised any objections, and what, if any, objection to the selection you had made from the list.

A. The list was made out in the office of Mr. Wilson, by Mr. Wilson, Mr. Peterson, & myself, from a list of the notes and accounts. Some of the accounts Mr. Peterson objected to as being turned out, as they were against some of his best customers, and he did not want to offend them, and preferred to collect them himself, and I allowed him to reserve those accounts. I don't think there were any notes that he asked to retain.

Q. At the time you took said notes & accounts, was Peterson engaged in business at Rochester?

A. He was.

Q. Had he at that time a stock of goods on hand?

A. He had a general assortment of dry goods & groceries, hats & caps, boots & shoes.

158 Q. From your knowledge, derived from Peterson's representations and other sources, what was your opinion or belief at the

time you took said securities for said debts as to the solvency of said Peterson?

(Objected to.)

A. I supposed he had abundance to pay his debts and leave him a handsome surplus, as he stated he had. He stated at the time that he was worth from 12 to 13,000 dollars over and above his indebtedness.

Q. Did you at that time know of any indebtedness than that shown in his statement of the 8th of December, 1869?

A. I did not, except the amount of our own indebtedness, which was not carried out on the statement.

Q. Did you or not prior to or at the time of the taking of said securities learn from said Wilson the value of the assets of said Peterson?

A. He gave me his opinion of them; that is, the value of the notes & accounts. I mean by that that he knew most of the parties whom they were against. Some of them he thought doubtful, but, by watching and looking after them, he could collect even those that he considered doubtful; and he thought that the most of them might be collected. The greater part of the securities he considered good and collectable.

I do not know anything about those not taken by me. My answer refers to those turned out to me.

159 Q. Then did you or not consult with Mr. Wilson as to the value of those not turned out to you?

A. No; I did not, except as to those that Mr. Peterson wanted to retain, which I supposed to be good.

Q. At the time you first applied to Peterson, on December 8th, 1869, for said securities, did you hold two promissory notes against him?

A. It is my impression that there were two, but there may have been only one. On examining the statement Exhibit A, attached to the answer, there is but one.

Q. Was that note surrendered when you took the new note?

A. It was.

Q. Do you know whether or not the firm of Dutcher, Ball & Goodrich ever had any security for that note?

A. I do not; I don't think they did.

Q. Did you know of Peterson at any time leaving at Chadbourn's Bank any note to be collected in favor of said firm to apply on his note to said firm?

A. I did not.

Q. Mr. Peterson states in his deposition as follows: "We went over to Chadbourn's Bank. There was a note against me there of 700 dollars belonging to this firm of Dutcher, Ball & Goodrich; also notes I had left there to be collected in Dutcher, Ball & Goodrich's favor, and
160 got the 700-dollar note and the security notes," &c. * * State whether you know anything about said security notes being left there for your said firm.

A. I think there were notes there, and possibly may have been left there for the bank to collect to apply on this note; if so, it was at his own voluntary offer, as I never had asked him for any security until the 8th day of December, 1869.

Q. Did you know at the time you surrendered that note and took the new note, on the 8th December, 1869, that you had any collaterals for his (Peterson's) indebtedness to your firm.

A. I don't know whether they were considered collaterals or not. We took some notes from Chadbourn's Bank over to Wilson's office, and I do not know whether they were left there as securities for us or for col-

lection, as he was in the habit of borrowing money on his notes and leaving said notes at the bank.

Q. Do you know whether those notes, or any of them, were included in the notes or securities that were delivered to you on the 8th day of December, 1869?

A. I think they were, a portion of them.

Q. Can you state the amount of the said notes which were taken from said bank over to Wilson's office?

161 A. I cannot state definitely. My best recollections are from 6 to 800 dollars.

Q. Do you know when Mr. Peterson deposited those notes, if he did at all, with the bank for collection?

A. I do not.

Q. Do you know whether or not those notes were due on the 8th day of December?

A. I do not. My impression is that there were one or two not due when they were turned out.

Q. At the time you first applied to Peterson, on the 8 day of December, 1869, for secu*sitg* for the indebtedness to your firm, state whether or not said Peterson objected to giving the same; and, if so, what objections he made.

A. At the time he did not object; before the matter was closed up he did. He seemed to have changed his mind for some purpose. I don't know what.

Q. Was anything, and if anything, , said by him in regard to the pressing the claims for collection?

A. No, I do not think there was anything said by him.

Q. What reason did he assign, if any, for having you take the claims and collect them?

A. Well, he thought we could collect them better than him; that he was a poor collector. He did not want to sue his own customers. That he was afraid of offending his customers if he sued them.

162 Q. Did he assign any reason for his changing his mind and not wanting to give you security?

A. I do not recollect just what was said on that point. I was very much surprised when I came in after dinner to find that he had changed his mind. My impression was that he wished to go on and collect his debts without being interfered with.

Q. Did he in the course of the conversation state that he thought of removing from Rochester with his business?

A. He did; he said he should go in the winter or early part of the spring; he was going somewhere to a Norwegian settlement; he named the point, but I do not recollect it.

Adjourned to Thursday at ½ past two, the 23 Oct., 1873.

WEDNESDAY, *February 18th, A. D.* 1874.

Parties appeared by consent. Mr. Ordway for the complainant, and Mr. H. M. Finch for the defendants.

The examination of Mr. John R. Goodrich continued by defendants' counsel.

Q. Did Peterson, at any time during the conversations with him state anything, and, if so, what, about his not wishing to press the accounts due him or some of them by collection; and, if so, what did he say upon that point?

(Objected to.)

163 A. He did not make any objections at first, but before the mat-

ter was closed up, he objected to turning them out for that purpose, and he reserved some of his best accounts, some of which he did not want to be sued.

Q. What reason did he assign why he did not want to press the collections?

(Objected to.)

A. He did not want to offend his customers. The reason was that he was going to continue his business during that winter, and he expected to remove in the spring to another point in the Norwegian settlement.

Q. What reason, then, if any, did you assign that he should transfer some of the accounts to you and allow you to collect them?

(Objected to.)

A. It was that they could be better collected in our name.

The witness desires, in answer to the question beginning on the 16th line of the 6th page, to correct the answer as it is there written, where it says "He stated at the time that he was worth from 12 to 13,000 dollars, &c.," should read he stated, October 5th, 1869, I was there at that time, that he was worth from 12 to 13,000 dollars. Peterson stated to me at the time we took the securities that "he was perfectly able to pay all of his debts and have a fine surplus left."

164 Cross-examination by Mr. Ordway:

Q. What notes had your firm taken of Peterson on this account, signed by himself, prior to December 8th, 1869, and upon what time, & how were they paid or taken up, & when?

A. My answer is taken from the books of the firm: One note of four hundred dollars, May 20th, 1869, at forty days; one note, May 24th 1869, for four hundred dollars, at sixty days; these notes were not fully paid at maturity. I think there was one hundred or one hundred and fifty dollars paid in money shortly after the maturity of the first note. We either held these notes for the balance due on them, or, if we took others, we held them, and all were surrendered on settlement on December 8th, 1869.

Redirect:

Q. After the giving of the two notes testified to on the cross-examination, what amount of goods did you sell to Peterson?

A. We sold him about $900 *dollars.*

JOHN R. GOODRICH.

165 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, a commissioner of the circuit court of the United States for the eastern district of Wisconsin, do hereby certify that the foregoing deposition of John R. Goodrich was taken before me at the time & place, and in presence of the counsel named in the caption, and that the said witness was, before the commencement of the taking of his deposition, by me duly and publicly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, and that the deposition as given was reduced to writing by consent of said counsel by Mr. W. J. C. Forster, my clerk, in presence of said witness, and from his statements, and that said deposition, when completed, was carefully read over to said witness and subscribed by him in my presence, and in presence of said counsel.

And I do further certify that I am not of counsel or attorney for either of the parties in the caption of said deposition named, nor in any way interested in the event of said cause.

In witness whereof I have hereunto set my hand this 18th day of February, A. D. 1874.

EDWARD KURTZ,
U. S. Commissioner for East'n Dist. of Wisconsin.

And afterwards, to wit, on the forty-eighth day of said term,
166 to wit, on the seventh day of March, A. D. 1874, present and presiding the honorable Thomas Drummond, circuit judge, the following proceedings were had, to wit:

Interlocutory decree & order of reference.

ADONIRAM J. WRIGHT, ASSIGNEE, &C.,
vs.
JOHN A. DUTCHER ET ALS. } In equity.

This day came the parties, by their counsel, and this cause having been heretofore at this term argued and submitted upon the
167 pleadings and proofs, and the court being now sufficiently advised of and concerning the same, it is ordered, adjudged, and decreed by the court that the prayer of the bill of complaint be granted; that said Neils Peterson was insolvent December 8th, 1869, and that the defendants had then reasonable cause to believe that he was then insolvent, and that the assignment of notes and accounts set forth in the answer was made by said Peterson when insolvent, and with a view to give a preference to the defendants, who then were creditors of said Peterson, and that said defendants then had reasonable cause to believe that such assignment was made in fraud of the provisions of the bankrupt act.

And it is further ordered and decreed that said assignment was and is void as against creditors, and that the defendants account for and pay over to the complainant all moneys by them collected, either personally or through their attorneys or agents, upon said notes and accounts, with interest at seven per cent. from the respective dates of such payments, giving a reasonable time for the remittance and receipt of such payments, and that they assign and transfer to said complainant, within sixty days from this date, all of the remaining notes and
168 accounts by them uncollected, with all judgments, substituted accounts, or notes, mortgages, and securities of all kinds by them or their attorneys obtained or taken in the place of, collateral to, or securing the same.

That said defendants stand charged with the notes of Ole Oleson of $54.73 and Syaer O. Haugen of $26.25, with interest at seven per cent. from the time they were or should have been collected as for moneys collected because the same were surrendered back to said Peterson without authority or consent of the complainant, if said notes were collected or collectable.

That the defendants be allowed a reasonable compensation for collecting said moneys and for placing other of said notes and accounts in judgment, and for getting certain securities by mortgage and names of third parties as sureties for certain other of said notes and accounts as specified in the deposition of Mr. Chas. C. Willson, which, by stipulation, is made part of said defendants' answer herein.

And because it is not known what a reasonable compensation for such service is, and the complainant not assenting to the amounts charged therefor in the account rendered by the defendants and in said deposition

of said Willson contained, it is ordered that it be referred to Mr.
169 Edward Kurtz, one of the masters of this court, to examine the said account and to take proof in relation to value and amount of such services, and in relation to the amount of moneys by said defendants paid out on account of getting the said judgments and securities and to report the gross sum to be allowed the defendants therefor; and also to compute and report the amount of interest due to the date of said report upon the money so collected from the date hereinbefore specified; and also the amount of principal and interest due to the date of said report upon said two notes so by the defendants surrendered to said Peterson, and that upon the principle here stated he state an account of such collections, two notes if collected or collectable, and interest to the day of said report, deducting therefrom the amount by him found reasonably due the defendants for making such collections and taking such judgments and securities, including disbursements mentioned in said account rendered by said Willson, which are undisputed, with interest on said disbursements and on the amount found due for services from the same date that interest is allowed against the defendants, and that he report the same forthwith.

170 *Master's report.*

JUNE 1, 1874.—This day came Edward Kurtz, esq., the master, and filed his report, as follows:

Circuit court of the United States of America for the eastern district of Wisconsin.

ADONIRAM J. WRIGHT, ASSIGNEE OF THE ESTATE of Neils Peterson, bankrupt,
vs.
JOHN A. DUTCHER, EDWARD H. BALL, & JOHN R. Goodrich. } In equity.

To the judges of the circuit court of the United States for the eastern district of Wisconsin:

In pursuance and by virtue of an order of this court made in the above cause, and bearing date the seventh day of March, A. D. 1874, by which it was referred to me, being one of the masters of this court, to examine the account rendered by the defendants and to report the gross sum to be allowed the defendants as compensation for collecting such of the notes and accounts of the said Neils Peterson as were placed in their hands for collection and for placing other of said notes and accounts in judgment and getting securities on others, and to compute and report the amount of interest due to the date of this report upon the
171 moneys so collected and the amount due upon two certain notes of Ole Oleson and Syaer O. Haugen, and to state an account of such collections and interest, &c., (a certified copy of which order of reference is hereto annexed,) I do respectfully certify and report that I have examined said account and have ascertained and computed the sum of one thousand eight hundred and thirty-six dollars and seventy cents ($1,836.70) to be the amount due the complainant from the defendants on the notes, accounts, and collections in said order of reference mentioned, including interest to the date of this report, and that I have stated an account of such collections, deducting therefrom the disbursements and charges on the same and adding interest as directed in said order of reference, which account is hereto annexed and marked "Schedule A," and to which for greater certainty I refer.

And I do further certify and report that from an examination of said account the following notes and accounts remaining in the hands of the defendants or their attorney uncollected, they are by said decree and order of reference ordered to assign and transfer to the complainant, with all judgments, substituted accounts or notes, mortgages, and securities of all kinds by them or their attorneys obtained or taken in the place of, collateral to, or securing the same, to wit:

172	Christopher Hope account, judgment entered April 5, 1872, for	$38 10
	Patrick Fogerty account & notes, judgment entered Mch. 16, 1870	347 63
	Wm. Hinds account, land bid by J. R. Goodrich, about	100 00
	Seivert Nelson account	54 23
	Ole Torgeson "	51 95
	Andrew Olson "	64 43
	John Mahon "	31 16
	Michael Olsen "	18 80
	Carl A. Quale note, judgment entered Nov. 4, 1870	35 65
	Ole N. Olsen " " " " " "	49 75
	Chas. H. Blackwood note, judgment, entered May 20th, 1870	85 81
	Michael Olson, judgment	15 90
	Peter Meney notes, judgment entered Aug. 18, 1873	308 41
	John Rooney note & mortgage, int. due from Aug. 4, 1870	153 50
	Am't of claims still in hands of defendants or their atty	$1,355 32

All which is respectfully submitted.
Milwaukee, June 1, 1874.

EDWARD KURTZ,
Master in Chancery.

Schedule A. referred to in the preceding report, being the account stated of collections made, with interest, and deducting disbursement & charges, with interest.

Names.	Disbursements.	Charges.	Total amt. collected.	Date collected.	
Geo. Hansen		1 50	16 52	Dec. 11, 1869.	
Halder Halderson		10 00	67 65	" 14, "	
Neils Tensen & als			81 08	Jan'y 17, 1870.	
Iver Nelson		5 00	37 20	Feb'y 17, "	
173 A. C. Stage	12 75	10 00	91 20	Feb'y 22, 1870.	
Edward Alvord	6 25	10 00	62 00	May 31, "	
Ole Fraaguat			36 90	June 3, "	
Peter Mundel		3 00	45 00	" 17, "	
Evan Amundson	3 50	10 00	66 54	" 18 "	
	22 50	49 50	504 09		
Deduct disbursements & charges			72 00		
			432 09		
Add interest from July 1, 1870=3 y. 11 mos., @ 7%.			118 44		550 53

Names.	Disbursements.	Charges.	Total amt. collected.	Date of coll'n.
John C. Buckley	3 30	5 00	41 10	July 25, 1870.
David Honeywell	.....	5 00	23 10	Aug. 1, "
H. Mouson	.....	5 00	22 50	" 2, "
John Rooney	3 00	10 00	15 35	" 4, "
Even Torkeldsen	24 54	25 00	160 93	Sept. 16, "
Andrew Johnson	9 90	10 00	74 70	Oct. 1, "
Jens Anderson	3 35	5 00	20 89	" 25, "
Jas. Campbell	3 20	5 00	31 60	" 27, "
Albert Fisher	4 40	5 00	54 12	" 31, "
Leonard Prior	3 80	5 00	40 00	Nov. 1, "
Arne T. Boni	3 85	5 00	22 25	" 2, "
H. H. Quille	3 20	5 00	26 36	" 3, "
R. C. Adams	8 68	20 00	217 95	" 18, "
Chas. Kruger	4 80	5 00	26 94	" 30, "
	76 02	115 00	777 79	
Deduct disbursements & charges			191 02	
			586 77	
Add. interest from Jan'y 1, 1871=3 y. 5 mo., @ 7%.			140 33	
				727 10

Names.	Disbursements.	Charges.	Total amt. collected.	Date of coll'n.
174 Geo. Hansen	18 25	25 00	170 25	June 19, 1871.
Peter McKone	4 22	10 00	68 35	Nov. 1, "
Wm. Hinds	43 20	40 00	66 71	" 11, "
P. M. Tolbert	.....	5 00	28 20	Fall of "
Michael McCanna	33 00	50 00	311 00	Dec. 16, "
	98 67	130 00	644 51	
Deduct disbursements & charges			228 67	
			415 84	
Add interest from Jan'y 1, 1872=2 y. 5 mos., @ 7%.			70 34	
				486 18

Names.	Disbursements.	Charges.	Total amt. collected.	Date of collection.	
B. McLaughlin		5 00	40 00	Dec. 24, 1872.	
Jas. P. Adamson	26 75	35 00	256 95	Feb. 4, 1873.	
	26 75	40 00	296 95		
Deduct disbursements & charges			66 75		
			230 20		
Add interest from April 1, 1873=1 y. 2 mos			18 80		
					249 00
The following claims included pursuant to said order of reference:					
Ole Olson note, $54.73, & int. from July 1, 1870, $15.02					69 75
Syaer O. Haugen, $26.25 " " " " " 7.20					33 45
					$2,116 01
Deduct also disbursements & charges on claims uncollected, with interest on disbursements, as follows:					
Christopher Hope, disbursements			7 10		
Int. from April 5, 1872			1 06		
Charges			10 00		
				18 16	
Amts. carried over				18 16	2,116 01
175 Amts. bro't over				18 16	2,116 01
J. & E. Fitzgerald, disbursements			1 32		
Charges			25 00		
				26 32	
Patrick Fogerty, disbursements			36 70		
Int. from Mch. 16, 1870			10 70		
Charges			50 00		
				97 40	
Carl A. Quale, disbursements			6 10		
Int. from Nov. 4, 1870			1 52		
Charges			5 00		
				12 62	
Ole N. Olsen, disbursements			5 85		
Int. from Nov. 4, 1870			1 46		
Charges			5 00		
				12 31	
Chas. H. Blackwood, disbursements			14 32		
Int. from May 20, 1870			4 03		
Charges			10 00		
				28 35	
Michael Olson, charges				2 00	
Peter Meney, disbursements			30 40		
Int. from Aug. 1, 1873			1 75		
Charges			50 00		
				82 15	279 31
Amount due complainant					$1,836 70

Milwaukee, Wis., June 1st, 1874.

EDWARD KURTZ,
Master in Chancery.

176 *Term.*

And now, at this same term, to wit, July term, A. D. 1874, and on the first day thereof, to wit, on the fourteenth day of July, A. D. 1874, the following proceedings were had, to wit:

Final decree.

ADONIRAM J. WRIGHT, AS ASSIGNEE OF THE estate of Neils Peterson, a bankrupt, complainant,
vs.
JOHN A. DUTCHER, EDWARD H. BALL, & JOHN R. Goodrich, defendants.
} In equity.

This cause came on to be further heard at this term upon the report of Edward Kurtz, one of the masters of this court, which report bears date and was filed in this court June 1, 1874, and was made in pursuance of an order of this court, heretofore made in this cause, referring it to the said master to examine the account of the defendants' agent, Mr. C. C. Wilson, which was made and is part of the defendants' answer herein by stipulation, and to take proof in relation to the value and amount of the services of said defendants' said agent in collecting portions of said notes and accounts, and in getting judgments,
177 substituted notes & securities upon others thereof, and in relation to the amount of moneys by said defendants paid out on account of getting the said judgments and securities, and to report the gross sum to be allowed to the defendants therefor; and also to compute and report the amount of interest due to the date of said report upon the moneys so collected from the date in said order specified, and also the amount of principal and interest due to the date of said report upon the notes of Ole Olson and Syaer O. Haugen in said order mentioned, and stated & found to have been surrendered to said bankrupt by said defendants without authority or the consent of the complainant, if said notes were collected or collectable, and to state an account of such collections, two notes, if collectable, and interest to the day of said report, deducting therefrom the amount by him found reasonably due the defendants for making such collections and taking such judgments and securities, including disbursements mentioned in the said account rendered by said Wilson, (defendants' agent,) with interest on said disbursements, and on the amount found due for services from the same date that interest is allowed against the defendants. On reading and filing said report, from which it appears that there
178 was due to said complainant from said defendants at the date of said report for moneys collected by them upon certain of said accounts and notes, with interest to the date of said report, and also including the two notes of Ole Olson and Sayer O. Haugen, with interest thereupon to the date of said report, over and above the amount found due to said defendants for services and disbursements, with interest thereon to the date of said report, the sum of eighteen hundred and thirty-six dollars and seventy cents, ($1,836.70.)

And it further appearing from said report that the following notes and accounts, being part of those assigned by said bankrupt to said defendants, and set forth in their answer, are uncollected, some of which have been put in suit by said defendants, and judgments and other se-

curities obtained therefor or thereupon in the name of said defendants, or of some or one of them, or of some agent for them, viz:

The account of Christopher Hope, which was put in judgment April 5th, 1872, amount of judgment then, $38.10, including disbursements, &c	38 10
The account and notes of Patrick Fogerty, put in judgment March 16, 1870, including disbursements, &c	347 63
The account of William Hinds, put in judgment & land sold upon execution, bid in name of deft. John R. Goodrich, including disbursements & charges	100 00
The account of Sivert Nelson	54 23
The account of Ole Torgeson	51 95
The account of Andrew Olson	64 43
The account of John Mahon	31 16
The account of Michael Olson	18 80
The note of Carl A. Quale, in judgment Nov. 4th, 1870	35 65
The note of Ole N. Olson, in judgment Nov. 4, 1870	49 75
The note of Charles H. Blackwood, in judgment May 20, 1870.	85 81
The note of Michael Olson	15 90
The notes of Peter Meney, in judgment August 18, 1873	308 41
The note of John Rooney & mortgage	153 50

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And it further appearing from said answer, and the statement of said Wilson therein contained, which is uncontroverted by the plaintiff, and is admitted to be true, that the account of John and Edward Fitzgerald, of $232.70, and the note of Edward Fitzgerald of $90.80, were by said defendants incorporated with other demands, held by the complainant as such assignee against said Fitzgeralds, and one note taken from said John & Edward Fitzgerald for a sum total of $500, which they secured by a chattel-mortgage, and that said defendants had, before the trial of this cause, surrendered said note and mortgage to the said complainant herein as such assignee.

180

And due notice of the filing of said report and of application for the confirmation thereof, and for a final decree herein having been given to the attorneys for said defendants, and no exceptions having been taken or filed to said report—

On motion of Messrs. Mariner, Smith & Ordway, solicitors for said complainant, it is ordered, adjudged, and decreed, and this court, by virtue of the authority therein vested, doth order, adjudge, and decree that the said report, and all things therein contained, do stand ratified and confirmed.

And it is further hereby ordered, adjudged, and decreed, that the said complainant have and recover from said defendants, and that said defendants pay to said complainant the said sum of eighteeen hundred and thirty-six dollars and seventy cents, with interest thereupon at seven per cent. per annum from June 1st, 1874, together with the costs of this suit, taxed at one hundred and fifty-two dollars and twenty-eight cents, and that the complainant have execution therefor.

And it is further ordered, adjudged, and decreed, that within sixty days from the date of the entry of this decree the said defendants make or cause to be made and delivered to the complainant herein, or to his attorneys herein, for him, full, fit, and complete assignments,

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deeds, releases, and transfers of all the notes and accounts hereinbefore set forth and specified as uncollected, together with all

additional or substituted securities and judgments taken, received, or obtained therefor, or for or on account of the same, or any part thereof.

J. C. HOPKINS,
Judge.

Decree signed, enrolled, & recorded July 14th, A. D. 1874.

EDWARD KURTZ,
Clerk.

Appeal.

And same day (July 14, 1874) came the defendants, by their counsel, and prayed an appeal to the Supreme Court of the United States. Whereupon it is ordered by the court that said appeal be, and hereby is, allowed, and that the defendants give bond for a supersedeas in the sum of four thousand dollars, with sureties, to be approved.

AUGUST 26, 1874.—This day came the defendants and filed their bond in the penalty of four thousand dollars, conditioned to prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, which bond (the complainants' solicitors waiving sureties thereon) is approved by the district judge, and is as follows:

182 *Appeal-bond.*

Know all men by these presents that we, John A. Dutcher, Edward H. Ball, and John R. Goodrich, of the city of Milwaukee, State of Wisconsin, are held and firmly bound unto Adoniram J. Wright, assignee of the estate of Neils Peterson, bankrupt, in the sum of four thousand dollars, to be paid to the said Adoniram J. Wright, his heirs, legal representatives and assigns, to which payment, well and truly to be made, we bind ourselves, and each of ourselves, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twenty-first day August, A. D. 1874.

Whereas the above-named John A. Dutcher, Edward H. Ball, and John R. Goodrich are about to prosecute an appeal from the decree heretofore entered in the suit of the said Adoniram J. Wright, assignee of the estate of Neils Peterson, bankrupt, against the said John A. Dutcher, Edward H. Ball, and John R. Goodrich, in the circuit court of the United States in and for the eastern district of Wisconsin, to the Supreme Court of the United States, to reverse said decree:

Now, therefore, the condition of the above obligation is such, that if the above-named John A. Dutcher, Edward H. Ball, and John
183 R. Goodrich shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make their appeal good, and shall stand to, abide by, and perform said decree if affirmed by said Supreme Court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN A. DUTCHER. [SEAL.]
EDWARD H. BALL. [SEAL.]
JOHN R. GOODRICH. [SEAL.]

(Endorsed:) Sureties waived & bond approved. Mariner, Smith & Ordway, attys. for compl. Aug. 21, 1874.

Approved: JAMES H. HOWE, *Judge.*

Whereupon it is ordered that execution be superseded and a citation issue.

184 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record & proceedings in the suit of Adoniram J. Wright, assignee, &c., vs. John A. Dutcher et al. In equity.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district, this tenth day of October, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-ninth.

[SEAL.] EDWARD KURTZ, *Clerk.*

185 The United States of America to Adoniram J. Wright, assignee of the estate of Neils Peterson, bankrupt, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal in the circuit court of the United States for the eastern district of Wisconsin, wherein John A. Dutcher, Edward H. Ball, and John R. Goodrich are appellants and you are appellee, to show cause, if any there be, why the decree passed against the said John A. Dutcher, Edward H. Ball, and John R. Goodrich should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness the honorable James H. Howe, district judge of the United States for the eastern district of Wisconsin, at the city of Milwaukee, in said district, this 26th day of August, in the year of our Lord one thousand eight hundred & seventy-four, and of the Independence of the United States the ninety-ninth.

JAMES H. HOWE,
District Judge.

We accept service of above citation this 28th day of September, A. D. 1874.

MARINER, SMITH & ORDWAY,
Solicitors for Complainant.

(Indorsement on cover:) No. 173. John A. Dutcher, Edward H. Ball, & John R. Goodrich, appellants, vs. Adoniram J. Wright, assignee of Neils Peterson, a bankrupt. E. Wisconsin C. C. U. S. Filed 17th October, 1874.

Supreme Court United States.

No..... October Term, 1876.

JOHN A. DUTCHER, EDWARD H. BALL & JOHN R. GOODRICH,

Appellants,

against

ADONIRAM J. WRIGHT, assignee of NEILS PETERSON, a bankrupt,

Respondent.

BRIEF FOR APPELLANTS.

W. P. LYNDE,
Counsel for Appellants.

MILLER & SMITH, Printers, 385 Milwaukee St.

In Supreme Court of the United States.

JOHN A. DUTCHER, EDWARD H. BALL & JOHN R. GOODRICH,

Appellants,

against

ADONIRAM J. WRIGHT, assignee of NEILS PETERSON, a bankrupt,

Respondent.

This was a bill in equity brought by the assignee of Neils Peterson, a bankrupt, in the Circuit Court of the United States, in and for the Eastern District of Wisconsin, to reach certain notes and accounts alleged to have been transferred to the appellants as collateral security to an indebtedness owing them by the bankrupt, and which transfer it is alleged was in fraud of the provisions of the bankrupt law.

The answer denies all of the material allegations of the bill. Replication was filed to the answer and proofs taken. On final hearing a decree was entered in favor of the Respondent and against the Appellants. The appeal is from this decree.

The main facts of the case are these:

Peterson was a merchant at Rochester, Minnesota. He had traded with the Appellants a number of years. He commenced purchasing goods from them in May, 1867, and continued such purchases until September, 1869. The items of his purchases and payments are shown in the account on page 19. May 20th, 1869, the Appellants took, in liquidation of their account against Peterson at that time, two notes of four hundred dollars each, one payable at forty days from date, and one at sixty days from date. The sum of one hundred and fifty dollars was paid on the first note shortly after its maturity. The Appellants sold Peterson goods after the giving of these notes to the amount of nine hundred dollars. During the summer of 1869 the Appellants sent statements of balances of account due to Peterson, requesting payment. Peterson replied to these requests by the letters printed on pages 21–22. On the 29th of December, 1869, the Appellant Goodrich was at Rochester to see about obtaining security for this indebtedness. After some negotiation, Peterson consented to place in the hands of one Wilson, an attorney at Rochester, certain notes and accounts which are scheduled on page 38 of the printed case. At the time Goodrich took these notes and accounts, he supposed that Peterson had abundance to pay his debts and have a fine surplus left (pages 57 and 59). While negotiations were going on for the settlement, Wilson made up a statement of Peterson's assets and liabilies from the disclosures of Peterson. This statement was read over to Peterson and he said it was correct. Goodrich was present. He and Peterson examined the statement in the presence of Wilson. "*It was made to advice Goodrich what to do.*" (Folio 151).

The statement will be found on page 52. This statement shows a large surplus of assets over liabilities.

Peterson filed his petition to be adjudged a bankrupt in the District Court of the United States, for Minnesota, and was adjudged a bankrupt on the 8th day of April, 1870. The Respondent was chosen assignee on the 28th day of April, 1870. This suit was not commenced until the 9th day of January, 1872. The evidence does not show what Peterson did with any of his goods and accounts between the 8th day of December, 1869, and the 8th day of April, 1870. The assignee states, at folio 148, *that when he took possession the stock of goods had been mostly sold by the sheriff on execution.* He does not state when the judgments were recovered, nor the amounts of the judgments nor the dates or number of executions issued. He sold the goods which came in his hands on or about the 25th of May, 1870, and realized on such sale the sum of $396.15. It appears from his statement that some of the assets mentioned in the schedule of the bankrupt did not come into his possession. He received, from the notes and accounts which came into his hands, $1.029.77. The total amount received from all sources was $1,425.92. (Folio 150 p. 54).

He says of the accounts, at folio 150: "I did not sue any of them for the reason that there were false charges on the books of Mr. Peterson against some of them. * * * *some of the debtors had moved out of the county. I did not know personally about the solvency of a greater portion of them.* I finally sold the notes and accounts on or about Nov. 25th, 1872, at auction, by order of the Court." * * The false charges were probably made by mistake and were afterwards explained by Peterson." It

appears from the evidence that Goodrich considered Peterson "*a good merchant but a poor collector, and had large amounts due him.*" "I thought," says Goodrich, "I should realize the money sooner by having these accounts placed with some one that would attend to them, and suggested to him (Peterson) that he turn out a portion of his notes and accounts, and place them in the hands of some one who should collect the same. We had settled that they should be given to some attorney." Folio 155.

It further appears that not only was there the statement made by Wilson from the disclosure of Peterson of Peterson's assets and liabilities, but Goodrich made inquiries at the bank as to Peterson's solvancy. At folio 156, page 56, Goodrich says: "I made the inquiry *to satisfy myself as to his solvency.* I learned from the assistant cashier that Peterson considered himself worth from $18,000 to $20,000. The assistant cashier said that *he thought him worth from* $8,000 *to* $10,000 *after his debts were paid.* They had in the bank—he was owing the bank—sufficient collaterals to cover the indebtedness. My impressions were that the bank had received some on its $1,700; that the amount was less at the time of the enquiry then specified in the statement."

Peterson states, on page 51, that the reason he did not pay the two four hundred dollar notes given to Appellants was that he had not the money in hand but had means in notes and accounts and goods upon which he could have raised the money by sacrifice of the notes and goods; *that he thought by waiting a little he could raise the money and not make the sacrifice*" He further says that another reason he did not make the payment was that "he made an agreement with Goodrich and paid him

$100 and gave him a new note for $700." When asked on direct examination if he had other debts due aside from Goodrich's he said he had, but when called to name them he could not. He says on cross-examination "*they were not crowding me.*"

The questions of fact in the record are these:

1st.— *Was Neils Peterson insolvent on the 8th day of December*, 1869 ?

2d.—*Did Mr. Goodrich have good reason to believe that Neils Peterson was insolvent on that day?*

If either of these questions are answered in the negative this decree must be reversed.

POINTS.

I.

The answer denying under oath the material allegations of the bill, it must be overcome by two witnesses, or one witness and strong corroborating circumstances.

Carpenter vs. P. W. Ins. Co., 4th How., 185.
Hughes vs. Blake, 6th Wheat, 453.
Tobey vs. Leonards, 2d Wall., 423.
Parker vs. Phetteplace, 1st Wall., 684.
Morgan vs. Tipton, 3d McLean, 339.

II.

Peterson was not insolvent on the 8th day of December, 1869.

The answer denies that Neils Peterson was insolvent on the 8th day of December, 1869. There is no evidence aside from his statement to Wilson of what his actual condition was on that day. His statement made to Wilson and by him reduced to writing, shows Peterson entirely solvent on that day. He could, on that day, by his own statement, have paid every dollar he owed and had a surplus. In April, 1870, he went into bankruptcy. What was he doing with his assets from December 8th until that time? What amount of goods did he sell? What amount did he collect of his notes and accounts during all of that time? *This record does not show.* The defendants show that Peterson had available assets to double his admitted amount of indebtedness in December, 1869. Proof that on the 8th day of April, 1869, four months thereafter, without any explanation of what has been done in the meantime with all of his assets, does not establish insolvency in December, 1869. This is the precise case as it stands upon the proof. We think that Peterson's insolvency in December, 1869, cannot be established by the evidence. *It is not proven.* The Respondents seek to infer that fact because of his condition in April, 1870, although the record does not show what Peterson did with his assets from the 8th day of December, 1869, to the 8th day of April, 1870.

III.

Did Goodrich have reasonable cause to believe that Peterson was insolvent on the 8th day of December, 1869?

The rule of law, on this point, is laid down clear enough for all practicable purposes in the cases of *Toof vs. Mar-*

tin, 13 Wal., 40, and *Buchanan vs. Smith*, 16 Wal., 308. In the last case, CLIFFORD, J., says: "*A creditor may be said to have reasonable cause to believe his debtor to be insolvent when such a state of facts is brought to his notice respecting the affairs and pecuniary condition of his debtor, in a case like the present, as would lead a pudent business man to the conclusion that he, the debtor, is unable to meet his obligations as they may mature in the ordinary course of business.*" The language is substantially the same in the opinion of Justice FIELD in *Toof vs. Martin*, 13 Wal., 50.

This being the law we say the evidence in this record conclusively establishes that Goodrich had no such state of facts brought to his notice of the pecuniary condition of his debtor as would or should have lead him, as a prudent business man, to conclude that his debtor was unable to meet his obligations as they might mature in the ordinary course of business.

He had known Peterson as a good merchant. In May, 1869, Peterson was indebted to his firm in the sum of $800. He took two notes for this indebtedness, payable respectively at forty and sixty days. His firm sold goods to Peterson thereafter to the amount of $900. The total indebtedness of Peterson to the firm of which Goodrich was a member on December 8th, 1869, was $1,741.12. He calls upon Peterson for security. He asks as to his condition. Peterson makes a disclosure of his affairs. He shows his entire indebtedness, including the Goodrich debt, to be $6,072.12. His assets he states at $18,000. Goodrich is not content with this statement. He goes to the bank to ascertain about its $1,700 debt. The assistant cashier says they have *collaterals enough to meet*

that paper, and that he thought Peterson was worth from $12,000 to $18,000 after all his debts were paid. Goodrich says that his impression was that some of the debt had been paid. Under these circumstances Goodrich takes from his debtor *a new note and these accounts as collateral.* Had he not a legal right to do so? Goodrich saw at a glance where the difficulty of his debtor was. Peterson had ample assets to pay all of his debts in full *if he would convert them into money.* Peterson did not want to make and would not make a sacrifice of his assets to pay his debts. He did not want to vex or annoy his regular and old established customers with suits. He refused to turn out some of his accounts for fear Goodrich would sue them. It was better for Peterson, better for all the creditors, that these accounts should be collected. *Goodrich took no goods.* He took only a portion of the accounts. He did nothing to break up the business of Peterson; every act he did was in *aid* of rather than *against* his debtor or the rights of the creditors. It was, without doubt,better to extend the time of payment than to put the claim into judgment, seize the stock and sell it on execution. The question is to be met by the acts of the parties on that 8th day of December, 1869, not by subsequent events as late as the 8th day of April, 1870.

In the *Toof* case it clearly appeared that the bankrupts "*did not then possess sufficient property even upon their own estimation of its value as given in their schedules to pay their debts. They exceeded the estimated value of the property by over twenty thousand dollars;* and for months previous the bankrupts had failed to meet their obligations as they matured. Creditors had pressed for payment without success; their stock of goods had been lev-

ied on, *and their store closed by the Sheriff under an execution against one of them.*" It appears that the bankrupts in the Toof case filed their petition on the 29th February, 1868. On the 18th of the previous January, about six weeks before the filing of the petition, the bankrupts conveyed the property in dispute. On the first day of January previous the Sheriff had levied on some of the goods. Notice of all these facts was brought home to the creditors.

In *Buchanan vs. Smith* it appears that the property of the bankrupt was destroyed by fire. *The company did no business after that.* Buchanan & Co. held a large number of notes maturing. Two days after the fire the bankrupts wrote Buchanan & Co. informing them of the fire and "of the magnitude of their loss;" they were further advised that "on account of our misfortune of burning we shant be able to meet those notes, of course we cant get the insurance money in and you will have to be easy with us and wait, but will get your pay in full." No statement was made of the Company's debts. Other facts, tending to show insolvency, were brought home to the knowledge of the creditors, not necessary to be here stated.

It will be seen at a glance that the cases of *Toof vs. Martin* and *Buchanan vs. Smith* presented an entirely different state of facts from those disclosed in this record.

In those cases the insolvency of the debtor was clearly established at the date of the obtaining the preference. In this case there is no conclusive proof that Peterson was insolvent in December, 1869. It is true that he owed debts which had matured. It is true that he did not pay those debts. It is, however, also true that he had, according to his own statement, goods, and notes

and accounts available to pay such indebtedness. He had only to use the necessary means to convert his assets into money and he could have paid all that he owed and had a surplus. The evidence fails to show what he did with his assets from the 8th day of December, 1869, until April 8th, 1870. This Court is left in ignorence of what become of those assets. At some time—the record does not show when—judgments were recovered, executions issued, and the larger portion of his goods sold. The dates of the judgments or executions, the amounts of the judgments, the amounts realized on the executions or the dates of the indebtedness upon which the judgments were obtained or the amount in value of goods taken; all of these facts are left unproven. Can this Court find, in the absence of proof, that Peterson was insolvent on the 8th day of December, 1869? Can it be assumed that his statement made on that day was utterly false? If not, then Peterson, by that statement, showed himself solvent. He was in fact able to pay all that he owed.

It clearly appeared in the cases of *Toof vs. Martin* and *Buchanan vs. Smith* that the creditors had good reason to believe that their debtors were bankrupt. In this case the answer denies any such belief. The proofs show that Goodrich took just the course which a prudent business man would take to learn the true condition of his debtor. He knew that his debtor was owing him about $1,800; he knew that he had not paid any of that indebtedness; he knew that as late as August 8th, 1869, Peterson had written: "I am sorry I cannot send you any money; harvest is just commenced *and I do hope it will not be long before I can pay you; money is not to be gotten at less than two per cent a month;*" he knew that in Octo-

ber, 1869, he had called upon Peterson at Rochester and Peterson had then told him that he "was worth 12 to $13,000." Upon this assurance he rested until December 28th, 1869, when he again called upon Peterson; then it was he, for the first time, made a full examination and investigation into the pecuniary condition of his debtor. At folio 158 is this question and answer: "From your knowledge, *derived from Peterson's representations and other sources*, what was your opinion or belief at the time you took said securities for said debts as to the solvency of said Peterson?" *Answer:* "I supposed he had abundance to pay his debts and leave him a handsome surplus, as he stated he had. He stated at the time that he was worth from $12,000 to $13,000 over and above his indebtedness." The witness on page 59 made a correction to this statement by saying: "it should read he stated Oct. 5th, 1869—I was there at that time—that he was worth from 12 to 13,000 dollars."

"*Peterson stated to me at the time we took the securities that he was perfectly able to pay all of his debts and have a fine surplus left.*"

The written statement made by Wilson upon the disclosures of Peterson, shows that this was true. The opinion of the assistant cashier of the bank confirmed it. It would seem that Goodrich would have the right to trust to this evidence, and that on the 8th day of December, 1869, he had not good reason to believe that Peterson was insolvent and unable to pay his debts in full as they matured, but on the other hand he had reason to believe that he could pay his debts in full at maturity, if he took such measures to collect and realize upon his assets as business men would take.

Justice Clifford says: "Ordinary prudence is required

of a creditor under such circumstances (*of actual insolvency*) and if he fails to investigate when put upon inquiry, he is chargeable with all the knowledge it is reasonable to suppose he would have acquired if he had performed his duty." The converse of this must be equally true. If the creditor does investigate, if he does ascertain the assets and liabilities of his debtor, and if the assets are largely in excess of the liabilities, then the creditor has fully performed his duty. If, as a prudent business man, he can and ought to believe the statement as made, he is fully authorized and justified in acting upon such information and belief. In this case Goodrich made all necessary and proper inquiries; he tried to ascertain the exact status of his debtor. He obtained all the information he could obtain. He acted upon that information as he lawfully might do. He *believed* that the fault of his debtor in not paying was not his want of assets but was entirely from his unwillingness to collect by suits his outstanding notes and accounts and convert his assets into money. He therefore wisely and properly, as he lawfully might do, after satisfying himself of the ability of his debtor to fully pay, concluded to take securities for his debt and extend the time of payment. In doing this we think he is not chargeable with any violation of the provisions of the bankrupt law.

The case really turns upon a question of fact. The following additional cases, however, may be cited:

Rice vs. Grafton Mills, 117 Mass., 232.
Judd vs. Gibbs. 3d Gray, 544.
Mays vs. Tritton, 20 Wal., 420.
Tiffany vs. Lucas, 15 Wal., 421.

W. P. LYNDE,
Of Counsel for Appellants.

No. 173.

Supreme Court of the United States.

ADONIRAM J. WRIGHT, Assignee of Peterson, a Bankrupt.

Respondent,

vs.

JOHN A. DUTCHER, ET AL.,

Appellants.

E. MARINER,

Solicitor for Respondent.

J. H. Yewdale & Sons, Printers, Milwaukee.

No. 173.

Supreme Court of the United States.

ADONIRAM J. WRIGHT, Assignee of Peterson, a Bankrupt.
Respondent,

vs.

JOHN A. DUTCHER, ET AL.,
Appellants.

This is an appeal from a decree of the Circuit Court for the Eastern District of Wisconsin.

The respondent filed his bill January 9th, 1872, alleging that the bankrupt filed his petition in the District of Minnesota, April 8th, 1870, and was adjudicated bankrupt on that day. On the 28th day of the same month the respondent was chosen assignee, and on the same day qualified. That on the 8th day of December, 1869, the bankrupt owed to the appellants the sum of seventeen hundred dollars, then

past due, and was insolvent; and in order to prefer the appellants assigned to them choses in action, to the amount of over three thousand dollars, they then having reasonable cause to believe him so insolvent. That the respondent has been unable to ascertain or discover a particular description or statement of the securities so assigned from the books of said Peterson, or from any other source. That the same, or such as are uncollected, are under the control of the appellants. That in August, 1871, the respondent demanded of the appellants, that they deliver up all property assigned to them by said bankrupt, within six months prior to the filing of his petition. And in December, 1871, he demanded a description of the securities assigned to them by said bankrupt on the 8th day of December, and demanded an account thereof, but the appellants refused each demand, and claim that the securities are their own property. The bill prays a discovery of the property so assigned to the appellants by the bankrupt, and of the disposition thereof since such assignment and an account, and that the moneys collected be paid to him, and the securities uncollected be turned over to him.

To this bill the appellant plead the limitation of the bankrupt law.

First. That the property was not assigned within four months before the petition was filed.

Second. That the defendants were not served with process within two years after the right of action accrued.

Third. That the District Court of Minnesota alone had jurisdiction of the subject.

Upon argument, these pleas were overruled.

And the appellants answered, admitting the citizenship,

the bankruptcy of Peterson; the appointment of the respondent as assignee; that they received the assignment of the choses in action as security for their debt from the bankrupt, Dec. 8, 1869; that their debt was then long past due; that they knew at the time that Peterson owed other debts past due, but had been informed that the bankrupt was worth twelve or thirteen thousand dollars; that the bankrupt told them at the time "that he had been making liberal payments" to one of his creditors; that Wilson, the appellants' lawyer, told them that the bankrupt had a surplus of twelve or thirteen thousand dollars, after paying debts; that they prevailed on the bankrupt, with the assistance of their lawyer, to assign enough of his outstanding credits to pay this debt, and to give them to their lawyer for collection, and when they did so, they did it in good faith, supposing that the bankrupt had enough to pay all his creditors and to spare, and that they had no reason to believe him insolvent; that the securities were, at the date of the answer, February 10, 1873, still in the hands of the appellants' attorney, except two hundred dollars he had remitted, and that their attorney was at all times ready and willing to give the respondent all the information he desired touching such claims; that they did not insist upon the bankrupt's paying them in cash at the time, because he did not have it to pay.

"*That the only inducement held out to Peterson for making the transfer to defendants* (appellants) *was that if he did not pay or secure, the defendants would be obliged to sue their claim, and collect it by due process of law.*"

And that the appellants then believed, and do still believe that the property of the bankrupt, if then seized and sold would have paid his debts and left a large surplus.

That they claim to hold the choses in action, so assigned,

till their debt is made, when they are willing to deliver the residue to the assignee.

Upon the trial of the issue, the judge found the following facts:

That Peterson, the bankrupt, was insolvent Dec. 8th. 1869, when the assignment of these choses in action was made.

That the appellant had then reasonable cause to believe that he was so insolvent.

That such assignment of notes and accounts was made by Peterson with a view to give preference to the defendants, who were then his creditors, and who then had reasonable cause to believe that such assignment was made in fraud of the bankrupt.

And decreed an accounting of the moneys collected, and that the appellants pay the amount to the respondent; and that they assign the remaining securities to the complainant. Such account was taken by a master, and his report was confirmed and a final decree entered; that the respondent recover the sum of $1.836.70 from the appellants, and that the appellants assign certain securities in the decree named. From this decree this appeal is taken.

The pleadings admit that the assignment was made Dec. 8th, 1869, and the petition filed April 8, 1870. The assignment was, therefore, made within four months before the filing of the petition.

The bankrupt was then insolvent. He owed the plaintiffs a large amount, long past due, for which they had pressed him repeatedly. See his letters, fol. 59. He owed Bonnell, and Bradley and Metcalf, and these claims were past due,

and the defendants knew it (fol. 44). He then informed the appellants that he had been making "*liberal payments*" on *this past due* indebtedness.

Could any experienced merchant, with the knowledge of these facts, have expected other than what followed: that he should become utterly bankrupt within six months.

It is true the appellant, Goodrich, says that he made inquiry of Peterson and others, and learned that Peterson had a surplus of from twelve to fifteen thousand dollars in October, which dwindled to "a fine surplus" in December (fol. 163). Attorney Wilson produces a memorandum of an oral statement made in December (fol. 146), which is certainly incorrect, in that it omits the amount of the appellants' debt, which is nearly one third of the whole, and which, if added, makes over $6,000 of debts against estimated assets $15,500, showing a surplus of nine thousand, a reduction of from four to six thousand between Oct. 5th and Dec. 8th, and of these estimated assets the appellants deemed it prudent to take two for one of the very best (and certainly the event justifies their prudence) to secure their debt!

The very fact that Peterson submitted to turn over his book accounts to the appellants to secure them, shows that he was reduced to the last extremity. This is the appellants' evidence to prove that they had no reason to believe Peterson insolvent. If these circumstances did not point to immediate bankruptcy, what circumstances could? If long continued suspension to all of his principal debtors does not point to insolvency, what does? Peterson's own testimony, and even the adjudication, hardly make the matter more certain. There is hardly a judge of this court who has not held, over and over again, that a merchant was insolvent, under the

provisions of this act, when he ceased paying his debts, as merchants ordinarily pay. This court has held substantially the same thing in Buchanan vs. Smith, 16 Wall, 277.

The defendant had a clear right to go into equity for relief.

First. For a discovery of what notes and accounts had been transferred.

He could not ascertain from the bankrupt or his books what had been transferred (fol. 7 and 52). In order to frame a declaration either in case or assumpsit, the notes and accounts must have been described. Edgerly vs. Emerson, 3 Foster (23 New Hampshire), 555.

Second. Because the remedy at law is not as complete or perfect as in equity. The statute, it is true, provides that the assignment is void, but it is not absolutely void; it is voidable only, and can only be avoided by the respondent. The law gives him the right to recover the property in specie. He could not bring an action at law for the specific property without being able to describe it.

If he could describe it, he could not get the possession of the particular species of property except through the decree of the court of chancery. Especially he could not compel an assignment by the appellants To get the possession of the notes and accounts he must get them through a bill of discovery. Morley vs. Green, 11 Paige 240. Conceding that there was a substantial remedy at law, it is not nearly as complete and perfect as in equity, and therefore the respondent was entitled to seek his remedy in equity. Barber vs. Barber, 21 Howard 582. With the discovery obtained by the bill the court can ascertain with certainty just what relief the respondent is entitled to. Without such discovery it would be nearly impossible.

There is but one other question in this case which we care to mention, and that is the provision in the decree charging the appellants with the claims of Oleson & Haugen. The first of these claims was almost immediately handed by the attorney of the appellants back to the bankrupt to enable him to sell it and make a preference; and the second was delivered to the bankrupt to enable him to recover judgment. This judgment, of course, inured to the appellants. If this were an action at law, there could be very little doubt as to correctness of the decision, but the respondent chose to go into equity, in order to have the benefit of a discovery as well as of the more flexible relief in the power of that court, and at first blush it does seem inequitable that a man should be compelled to respond to the assignee for property which he took it from the hands of the bankrupt in order to obtain a preference long before the petition was filed, but which he returned. If the property were still in the hands of the bankrupt, and actually came to the hands of the assignee, it does seem hard that the assignee should recover its value. If the bankrupt uses it, when returned, to make another preference, the assignee has his remedy against the creditor last preferred. If the party will come into a court of equity, why should he not submit to that inherent abhorrence that equity has for forfeitures.

On the other hand, the object of this provision is to insure an equal distribution of the assets of a bankrupt among his creditors, Congress could prescribe such penalties as it saw fit. It has provided, Sec. 5128–9, that the assignee may recover the property which has been conveyed as a preference, or its value, from the party who has received it. It could have provided that the person so receiving a preference should refund four fold, and the courts must have enforced it. Why should they not enforce this provis-

ion? Why should they not require a man who has received a preference contrary to the act, to see to it that it comes into the estate? Although he takes it contrary to law, he has the right to hold it except proceedings in bankruptcy be taken, and when proceedings are taken he can surrender it to the assignee! What hardship is there in compelling him, if he will assume the risk of once taking it, to see to it that the property gets into the hands of the assignee instead of back to the bankrupt, who he knows is willing to dispose of it contrary to the act? So far as I know this is a new question, and it would seem that the spirit of the act would be best carried out in such a case by adhering to the letter agreeably to the decree below.

If however, the ruling goes too far, if a party receiving a preference may hand it back in order that the bankrupt may sell the property and with the proceeds prefer another as was the fact in case of the Oleson claim, (fol. 124). Then the decree can be abated by that amount for the appellants can derive no benefit. In respect to the Haagen claim, the appellants have the benefit of that, or can have, and I see no reason why the decree should not stand as to it.

E. MARINER.

Solicitor for respondent.